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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176791
Party	Defendant MATTEL, INC.
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Submission	Defendant's Notice of Reliance
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78/751,105
Published for Opposition in the OFFICIAL GAZETTE on December 12, 2006

UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.

Applicant

NOTICE OF RELIANCE RE: DISCOVERY DEPOSITIONS

Vol. 2 of 3

Exhibit B

**CERTIFIED
COPY**

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MERRILL LEGAL SOLUTIONS

WILLIAM WADDELL

1 Deposition of WILLIAM WADDELL, the witness,
2 taken on behalf of the Applicant, on Wednesday,
3 November 5, 2008, 11:06 a.m., at 808 Wilshire
4 Boulevard, 3rd Floor, Santa Monica, California,
5 before SUSAN LYNN POBOR, CSR No. 5132, pursuant to
6 Notice.

7
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24 VIDEOGRAPHER: DANIEL ROCCO

25 ALSO PRESENT: JOANNE CHO

WILLIAM WADDELL

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WILLIAM WADDELL

I N D E X (CONTINUED)

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INFORMATION REQUESTED

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(NONE)

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QUESTIONS INSTRUCTED NOT TO ANSWER

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WILLIAM WADDELL

1 WEDNESDAY, NOVEMBER 5, 2008

2 LOS ANGELES, CALIFORNIA

3 11:06 A.M.

4 ---o0o---

11:05:43

5 THE VIDEOGRAPHER: Here begins Volume I,
6 videotape Number 1, in the deposition of Bill Waddell,
7 in the matter of UMG Recordings, Inc. versus
8 Mattel, Inc., filed in the United States Patent And
9 Trademark Office. Case number is 91176791.

10 Today's date is Wednesday, November 5th,
11 2008. The time on the video monitor is 11:06 hours.

12 The video operator today is
13 Daniel Rocco, contracted by Merrill Legal Solutions.
14 This video deposition is taking place at
15 808 Wilshire Boulevard, 3rd Floor, Santa Monica.

16 Counsel, please identify yourselves and
17 state whom you represent.

18 MR. ISER: I am Lawrence Iser, and I represent
19 Mattel, Inc., the applicant.

20 MS. LEWIS: And I'm Alexa Lewis. I represent
21 UMG Recordings, Inc., the opposer.

22 With me here today is Joanne Cho.

23 THE VIDEOGRAPHER: The court reporter today is
24 Susan Pobor of Merrill Legal Solutions.

25 Will the reporter please swear in the

WILLIAM WADDELL

11:06:59 1 witness.

11:06:59 2 WILLIAM WADDELL,
11:06:59 3 having been first duly sworn, was
11:06:59 4 examined and testified as follows:

11:06:59 5

11:07:00 6 EXAMINATION

11:07:00 7 BY MR. ISER:

11:07:10 8 Q. Good morning.

11:07:10 9 Could you state your full name for the
11:07:15 10 record, please?

11:07:16 11 A. William Waddell.

11:07:18 12 Q. And, Mr. Waddell, would you tell me the
11:07:20 13 date of birth -- your date of birth, please?

11:07:22 14 A. January 30, 1958.

11:07:24 15 Q. And by whom are you employed?

11:07:30 16 A. Universal Music Group or
11:07:34 17 UMG Recordings, Inc., sometimes referred to in
11:07:38 18 different ways.

11:07:42 19 Q. Which is it?

11:07:43 20 Can you tell me who your direct employer
11:07:45 21 is?

11:07:47 22 A. My paycheck says UMG Recordings, Inc.

11:07:49 23 Q. Okay. What's the difference between
11:07:53 24 Universal Music Group and UMG Recordings, Inc.?

11:07:57 25 A. I don't know.

WILLIAM WADDELL

11:07:58 1 Q. Okay. As long as the check clears, it
11:08:01 2 doesn't really matter.
11:08:02 3 Right?
11:08:03 4 A. Not really. Not to me.
11:08:03 5 Q. Okay. And what is your position at,
11:08:08 6 we'll just say, Universal?
11:08:11 7 A. I'm a vice president of business affairs
11:08:14 8 for Universal Music Enterprises, a division of
11:08:19 9 UMG Recordings, Inc.
11:08:21 10 Q. What is the business of Universal Music
11:08:58 11 Enterprises?
11:08:58 12 Did you say Universal Music
11:09:01 13 Enterprises, Inc.?
11:09:02 14 A. No.
11:09:02 15 Q. Okay. What is the business of Universal
11:09:04 16 Music Enterprises?
11:09:04 17 A. It's probably quicker just to refer to
11:09:06 18 it as UME.
11:09:06 19 Q. Okay.
11:09:09 20 A. That's how we refer to it.
11:09:11 21 Q. All right.
11:09:13 22 A. UME really is the catalog exploitation
11:09:15 23 division for the United States.
11:09:20 24 So with respect to recordings owned by
11:09:24 25 the Universal Music Group, UME is responsible for

WILLIAM WADDELL

11:09:30 1 exploiting those recordings in the United States.

11:09:34 2 Q. Have you ever had your deposition taken

11:09:51 3 before?

11:09:52 4 A. Nope.

11:09:52 5 Q. Okay. Well, welcome to a deposition.

11:09:55 6 Let me take a moment to give you a few

11:09:56 7 of the ground rules.

11:09:59 8 The lady sitting to your right is a

11:10:01 9 court reporter. She's going to do her best to take

11:10:05 10 down everything that transpires here today, all of my

11:10:08 11 questions, all of your answers, and any objections or

11:10:11 12 comments that your attorney may wish to make during

11:10:13 13 the course of the proceedings.

11:10:16 14 It's important that because there are

11:10:20 15 numerous participants, that we give each other a

11:10:23 16 moment to speak without speaking over one another,

11:10:26 17 because if we all start talking at the same time, that

11:10:29 18 makes things very difficult for our court reporter.

11:10:32 19 So if you'll give me a chance to finish

11:10:35 20 my question, I'll give you a chance to finish your

11:10:35 21 answer, and we'll both give counsel enough time to say

11:10:37 22 anything that she wants to say.

11:10:37 23 Do you understand that?

11:10:40 24 A. Yes.

11:10:40 25 Q. Okay. At the conclusion of today's

WILLIAM WADDELL

11:10:43 1 proceeding, the court reporter is going to prepare a
11:10:47 2 booklet of what has taken place here, all my questions
11:10:51 3 and answers and objections and things. That booklet
11:10:54 4 is called the deposition.

11:10:55 5 You'll be given a chance to read that
11:10:57 6 deposition, make any changes that you wish to make to
11:11:00 7 your deposition, and then sign the deposition as being
11:11:04 8 true under penalty of perjury just like the oath
11:11:06 9 you've been given.

11:11:07 10 I want to warn you, however, that if you
11:11:09 11 make any changes to your testimony when this case
11:11:13 12 proceeds along in the Trademark Office, we'll comment
11:11:18 13 on the fact that you changed your testimony and we'll
11:11:20 14 argue because of the change that your credibility as a
11:11:24 15 witness should be adversely affected by the fact that
11:11:27 16 you changed your testimony.

11:11:29 17 So for that reason, you want to try to
11:11:30 18 avoid having to make any changes.

11:11:32 19 And make sure today that you understand
11:11:34 20 my question before you answer it. And if you don't
11:11:36 21 understand my question, just tell me that. I'll do my
11:11:39 22 best to rephrase it.

11:11:41 23 Okay?

11:11:41 24 Do you understand all that so far?

11:11:43 25 A. Yes.

WILLIAM WADDELL

11:11:43 1 Q. You've just been given an oath by the
11:11:47 2 court reporter. That's an oath to tell the truth
11:11:49 3 under penalty of perjury. It's the same oath that
11:11:52 4 you'd be given if you were testifying in a courtroom.
11:11:55 5 So even though we are in the relatively
11:11:58 6 informal setting of my law office today and not in a
11:11:58 7 courtroom, I want you to understand that the oath that
11:12:04 8 you've been given has the same force and effect as if
11:12:06 9 you were testifying in a courtroom.
11:12:08 10 So that if you lied today under oath,
11:12:11 11 that would constitute perjury.
11:12:11 12 Do you understand that?
11:12:13 13 A. Yes.
11:12:13 14 Q. Okay. Sir, how long have you been
11:12:19 15 employed by UME?
11:12:23 16 A. UME?
11:12:24 17 Almost six years.
11:12:26 18 Q. And where were you employed before that?
11:12:32 19 A. MCA Records.
11:12:34 20 Q. So you've been with UME since
11:12:45 21 approximately 2002?
11:12:47 22 A. Correct.
11:12:47 23 Q. Okay. And prior to 2002, how long were
11:12:53 24 you with MCA Records?
11:12:55 25 A. I began at MCA Records, I believe, in

WILLIAM WADDELL

11:12:57 1 August of '99.

11:12:59 2 Q. And what was your -- what was your job
11:13:09 3 at MCA Records?

11:13:13 4 A. I was in-house counsel.

11:13:15 5 Q. And what position did you have prior to
11:13:29 6 August 1999?

11:13:29 7 A. I was an associate at the firm of
11:13:33 8 Long & Levit in San Francisco.

11:13:35 9 Q. And how long were you an associate at
11:13:46 10 Long & Levit?

11:13:47 11 A. Since August of '91.

11:13:48 12 Q. Through -- continuously through
11:13:56 13 August 1999?

11:13:57 14 A. Correct.

11:13:57 15 Q. And were you employed prior to
11:14:08 16 Long & Levit?

11:14:09 17 A. Oh, yes.

11:14:09 18 Q. Okay. And what employment did you have
11:14:12 19 preceding Long & Levit?

11:14:13 20 A. I had a summer job for a company or a
11:14:17 21 law firm called Owen Melbye & Rolfe.

11:14:22 22 Q. Owen?

11:14:23 23 A. I think so. Owen Melbye & Rolfe, I
11:14:27 24 think was the name of the law firm.

11:14:28 25 Q. That was a summer associate position?

WILLIAM WADDELL

11:14:31 1 A. That's correct.

11:14:32 2 Q. And where are they located?

11:14:34 3 A. Redwood City, or they were. I don't

11:14:38 4 know if they exist.

11:14:39 5 Q. What kind of law did they practice?

11:14:43 6 A. Insurance defense.

11:14:44 7 Q. And where were you in law school at the

11:14:44 8 time that you clerked at Owen Melbye & Rolfe?

11:14:53 9 A. University Of The Pacific.

11:14:54 10 Q. And where is that located?

11:14:59 11 A. Sacramento.

11:15:00 12 Q. And during what dates did you attend the

11:15:07 13 law school at the University Of The Pacific?

11:15:09 14 A. I believe I began in August of 1988, and

11:15:12 15 graduated in June of 1991.

11:15:14 16 Q. When was your summer position at

11:15:24 17 Owen Melbye & Rolfe?

11:15:26 18 A. It would have been the summer of 1992 --

11:15:30 19 no excuse me -- 1989.

11:15:32 20 Q. And when did you graduate from --

11:15:40 21 Oh, June of 1991, you graduated?

11:15:42 22 A. Correct.

11:15:43 23 Q. And then you went to work directly for

11:15:45 24 Long & Levit?

11:15:46 25 A. That's correct.

WILLIAM WADDELL

11:15:46 1 Q. Okay. Now, prior to going to law school

11:15:50 2 in 1988, were you employed?

11:15:52 3 A. Yes.

11:15:52 4 Q. And what were you doing?

11:15:54 5 A. I was a -- what did they call it -- some
11:15:59 6 kind of an engineer for Steelcase, Inc.

11:16:03 7 Q. What's the business of Steelcase, Inc.?

11:16:06 8 A. Manufacturing steel furniture for
11:16:09 9 commercial customers.

11:16:10 10 Q. How long were you there?

11:16:15 11 A. Year and a half.

11:16:18 12 Q. And when did you attend college, sir?

11:16:29 13 A. I attended college -- I began attending
11:16:33 14 college in 1976. I graduated in 1987.

11:16:37 15 Q. And from what institution did you
11:16:39 16 graduate?

11:16:40 17 A. Long Beach State.

11:16:41 18 Q. Did you have any employment in the music
11:16:50 19 industry broadly defined prior to 1987?

11:16:55 20 A. No.

11:16:56 21 Q. Okay. When you worked at Long & Levit,
11:17:01 22 did you have any clients that were engaged in the
11:17:05 23 music industry?

11:17:10 24 A. No.

11:17:10 25 Q. Okay. So your position at MCA Records

WILLIAM WADDELL

11:17:13 1 after Long & Levit was the first time that you did
11:17:17 2 anything in the music business?
11:17:21 3 A. Other than like going to shows.
11:17:22 4 But, yes, in a professional capacity --
11:17:26 5 Q. Yes.
11:17:26 6 A. -- correct.
11:17:27 7 Q. Okay. So you pointed out the vagueness
11:17:30 8 of my question, and so I'll just go back, which I
11:17:32 9 appreciate.
11:17:34 10 Your position at MCA Records commencing
11:17:36 11 in August 1999 was the first employment you had of any
11:17:39 12 kind in the music industry.
11:17:40 13 Correct?
11:17:42 14 A. That's correct.
11:17:48 15 Q. Okay. And what were your duties and
11:17:51 16 responsibilities at MCA Records?
11:17:55 17 A. Well, I reported to senior vice
11:18:00 18 president of business affairs. He would give me
11:18:02 19 assignments which were generally to draft and
11:18:07 20 negotiate the terms of exclusive recording artist
11:18:14 21 agreements.
11:18:16 22 Q. While you were at MCA Records, did you
11:18:23 23 have any responsibilities with respect to overseeing
11:18:25 24 litigation?
11:18:26 25 A. No.

WILLIAM WADDELL

11:18:26 1 Q. While you were at MCA Records, did you
11:18:33 2 have any duties and responsibilities with respect to
11:18:35 3 trademark licensing?

11:18:39 4 A. No.

11:18:39 5 Q. While you were at MCA Records, did you
11:18:48 6 have any duties and responsibilities with respect to
11:18:56 7 Motown Records or any Motown labels?

11:18:59 8 A. No, not none at all.

11:19:01 9 Let me go back to your litigation
11:19:03 10 question, though.

11:19:03 11 Q. Okay.

11:19:04 12 A. Occasionally, we would sign recording
11:19:06 13 artists that were under the age of 18.

11:19:08 14 Q. Yes?

11:19:09 15 A. And we would have to go to court and get
11:19:12 16 the recording agreement approved by the court in
11:19:17 17 compliance with certain laws with respect to minors.

11:19:22 18 I don't consider that really litigation,
11:19:24 19 but I did -- I was involved in that process.

11:19:27 20 Q. Did you actually go to court?

11:19:30 21 A. No.

11:19:30 22 Q. Did you supervise outside counsel that
11:19:33 23 went to court?

11:19:34 24 A. No.

11:19:34 25 Q. Okay. What responsibilities did you

WILLIAM WADDELL

11:19:35 1 have with respect to the approval of the minor's
11:19:40 2 contract?

11:19:41 3 A. Drafted certain filings, you know, court .
11:19:44 4 documents pursuant to a form that they required. And
11:19:51 5 they would approve it or send you back questions as to
11:19:54 6 why.

11:19:54 7 There was no court appearances required.

11:19:57 8 Q. Okay. Have you generally told me all of
11:20:02 9 your duties and responsibilities at MCA Records?

11:20:10 10 A. There's more to it. I mean, there's
11:20:11 11 more that goes on inside of a record company than just
11:20:15 12 drafting an agreement, getting it signed, and waiting
11:20:18 13 for the next agreement.

11:20:19 14 But I'm not sure what you're asking for.

11:20:21 15 Q. Well, I'm just -- at this point just
11:20:24 16 trying to get the broad strokes to find out that --

11:20:26 17 Generally speaking, you've told me the
11:20:27 18 various categories of things that you did while you
11:20:31 19 were you at MCA --

11:20:31 20 A. Right.

11:20:32 21 Q. -- and if there's something that you
11:20:33 22 haven't told me, I'd appreciate you letting me know
11:20:38 23 now.

11:20:38 24 A. Well, you know, it's a process. You
11:20:39 25 sign the artist, and the artist goes ultimately into a

WILLIAM WADDELL

11:20:41 1 studio and records a record.

11:20:42 2 There's certain things that the artist
11:20:45 3 is required to deliver to the record company as part
11:20:47 4 of their obligation under the agreement.

11:20:50 5 Sometimes the lawyers are involved in
11:20:51 6 making sure those obligations are fulfilled.

11:20:57 7 Sometimes a recording might contain
11:20:59 8 samples of other recordings which might require some
11:21:02 9 oversight to make sure those samples are cleared.

11:21:08 10 Occasionally, we would do something
11:21:09 11 that's called a label deal. It's sort of like an
11:21:12 12 imprint where you have someone who you have signed on
11:21:15 13 that might find talent and bring talent to the label.
11:21:20 14 And that's different than a recording agreement.

11:21:25 15 I'm sure there's some other things I'm
11:21:28 16 missing, but pretty straight ahead, just standard
11:21:31 17 record company business affairs type activities.

11:21:33 18 Q. Okay. I understand.

11:21:35 19 And then in 2002, did MCA merge with
11:21:45 20 Universal?

11:21:49 21 A. MCA Records is a division of
11:21:52 22 Universal -- of UMG Recordings, Inc. or was at that
11:21:55 23 time.

11:21:55 24 Q. So all throughout the time that you were
11:22:01 25 employed at MCA, it was a division of Universal Music

WILLIAM WADDELL

11:22:07 1 Group?

11:22:07 2 A. That's my understanding, yes.

11:22:08 3 Q. Okay. So commencing in 2002, did your
11:22:37 4 duties and responsibilities change?

11:22:39 5 A. Yes.

11:22:39 6 Q. Okay. Tell me what your duties and
11:22:42 7 responsibilities became when you started working at
11:22:46 8 Universal Music Enterprises.

11:22:50 9 A. Well, UME is a catalog division. So
11:22:56 10 there are some exceptions to what I'm going to say,
11:22:59 11 but for the most part, UME does not sign recording
11:23:02 12 artists to recording agreements and engage in the
11:23:05 13 practice of paying for the recording and delivery of
11:23:08 14 new recordings to be, you know, exploited and sold.

11:23:11 15 Q. Uh-huh.

11:23:12 16 A. So probably the bright line difference
11:23:15 17 between the two is that you go from being in an
11:23:18 18 environment where you're dealing with current
11:23:20 19 recording artists recording current new songs to
11:23:23 20 dealing with being in an environment where you're
11:23:27 21 dealing with songs that have been recorded previously
11:23:31 22 and which you have nothing to say about those
11:23:33 23 recordings or the act of recording those songs, but
11:23:35 24 you're trying to license them out, is probably the
11:23:38 25 greatest thing that we do, is a lot of licensing.

WILLIAM WADDELL

11:23:41 1 We put out compilations, greatest hits,
11:23:46 2 box sets.
11:23:47 3 We do what we can to exploit them, these
11:23:50 4 catalog recordings, via the Internet.
11:23:54 5 We license them for film and television
11:23:58 6 use.
11:23:59 7 We enter into deals with corporations
11:24:01 8 for the creation of what we call special markets type
11:24:04 9 packages.
11:24:08 10 We get involved with other major
11:24:10 11 recording labels for the creation of repertoire,
11:24:18 12 creation of compilations, whether the songs are owned
11:24:21 13 by different majors.
11:24:34 14 Q. Well, have you told me everything you
11:24:35 15 can recall -- again, broadly speaking in categories --
11:24:38 16 that you've done while you were at Universal Music
11:24:41 17 Enterprises?
11:24:41 18 A. Did that answer set forth everything
11:24:43 19 I've done since I've been there?
11:24:45 20 No.
11:24:45 21 Q. Broadly speaking in categories.
11:24:47 22 I recognize from day-to-day, there may
11:24:50 23 be things here and there, and I'm not going to ask
11:24:51 24 you --
11:24:51 25 A. Yeah, I mean, I get so many things

WILLIAM WADDELL

11:24:53 1 thrown at us. We have -- We've been asked to -- I
11:24:55 2 remember being asked to, you know, evaluate investing
11:24:59 3 in a development of a music-related television series
11:25:02 4 or -- couple times, that's occurred -- or doing major
11:25:07 5 corporate tie-ins.

11:25:08 6 And, I mean, it's just a lot of
11:25:10 7 different things that tend to come to Universal Music
11:25:14 8 Enterprises, because we are the catalog group and we
11:25:16 9 tend to do most everything that the front line labels
11:25:20 10 don't do.

11:25:30 11 Q. When you speak of front line labels, are
11:25:32 12 you referring to labels that have new artists and
11:25:35 13 coming out with new records?

11:25:36 14 A. Correct.

11:25:36 15 Q. Okay. Or existing artists coming out
11:25:41 16 with new records?

11:25:42 17 A. Right.

11:25:42 18 But the idea is new recordings, new
11:25:45 19 stuff.

11:25:46 20 Q. Okay. And during the time that you've
11:25:54 21 been at UME, have you had responsibility for the
11:25:59 22 Motown catalog?

11:26:00 23 A. Yes.

11:26:00 24 Q. Okay. Now, during the time that you've
11:26:03 25 been at UME, have you had any responsibilities for

WILLIAM WADDELL

11:26:06 1 trademark licensing?

11:26:08 2 A. Yes.

11:26:08 3 Q. Okay. Have you ever done any trademark
11:26:12 4 licensing work with respect to trademarks concerning
11:26:17 5 Motown?

11:26:20 6 A. Sort of.

11:26:21 7 I entered into an agreement for the
11:26:24 8 licensing of the trademark "Temptations" and
11:26:29 9 Temptations -- The Temptations were a group signed to
11:26:32 10 Motown records.

11:26:37 11 Q. And who owns the trademark
11:26:42 12 "Temptations"?

11:26:44 13 A. My understanding is that Motown Records
11:26:46 14 does.

11:26:46 15 Q. Other than working on an agreement for
11:27:06 16 licensing of the mark "Temptations", have you done any
11:27:10 17 other trademark licensing work with respect to Motown?

11:27:24 18 A. Well, have I been --

11:27:27 19 You have to kind of rephrase.

11:27:28 20 I'm not sure what "work" means.

11:27:30 21 Meaning have I been involved in
11:27:33 22 discussions about trademark licenses and that kind of
11:27:36 23 thing, or have I put pen to paper and drafted a
11:27:39 24 trademark license for Motown?

11:27:41 25 Q. Either of those two.

WILLIAM WADDELL

11:27:43 1 Discussions or actually putting pen and
11:27:43 2 paper --
11:27:45 3 A. I have not put a pen to paper.
11:27:46 4 Q. Okay. You've never negotiated a license
11:27:49 5 agreement for any of the Motown trademarks?
11:27:51 6 A. That ultimately ended up in an actual
11:28:02 7 trademark license being created?
11:28:05 8 Q. Yes.
11:28:06 9 A. No, I have not.
11:28:06 10 Q. Okay. Have you ever drafted a proposed
11:28:11 11 license for one of the Motown trademarks that did not
11:28:16 12 end up getting finished?
11:28:20 13 A. No.
11:28:20 14 Q. Okay. Have you been involved internally
11:28:25 15 in discussions regarding the licensing of any of the
11:28:29 16 Motown marks?
11:28:31 17 A. Yes.
11:28:31 18 Q. On how many occasions prior to today
11:29:02 19 have you been involved internally regarding the
11:29:06 20 potential licensing of any Motown marks?
11:29:10 21 MS. LEWIS: Objection. Calls for speculation.
11:29:12 22 If you know.
11:29:15 23 THE WITNESS: How many different potential
11:29:18 24 deals?
11:29:18 25 / / /

WILLIAM WADDELL

11:29:18 1 BY MR. ISER:
11:29:19 2 Q. Okay. Yes.
11:29:19 3 A. Is that what we're talking about?
11:29:22 4 Q. Sure.
11:29:37 5 A. I'm kind of running through my memory
11:29:40 6 here, but four or five come to mind.
11:29:42 7 Q. Any of these discussions that you
11:29:56 8 participate --
11:29:57 9 Strike that.
11:29:58 10 Did any of these discussions that you
11:29:59 11 participated in internally ever result in the
11:30:04 12 licensing of a Motown mark?
11:30:07 13 A. Yes.
11:30:07 14 Q. Okay. All five of them?
11:30:09 15 A. No.
11:30:10 16 Q. Okay. How many?
11:30:16 17 A. Well, I think two.
11:30:17 18 Q. Okay. With respect to these occasions,
11:30:38 19 is it correct that you were not the attorney within
11:30:41 20 UME responsible for actually drafting the license?
11:30:45 21 A. That's correct.
11:30:46 22 Q. Okay. Does Universal have a department
11:30:53 23 dedicated to trademark licensing?
11:30:57 24 MS. LEWIS: Objection. Vague and ambiguous.
11:31:03 25 THE WITNESS: You want me to answer?

WILLIAM WADDELL

11:31:03 1 BY MR. ISER:

11:31:04 2 Q. Yes, please.

11:31:05 3 A. No.

11:31:05 4 Q. Okay.

11:31:06 5 A. Dedicated as in they don't do anything

11:31:09 6 else or --

11:31:10 7 Q. We'll start with that, yeah.

11:31:11 8 A. No, there's no standalone dedicated that

11:31:14 9 this is all we do, no.

11:31:16 10 Q. Okay. Are there one or more lawyers or

11:31:19 11 other individuals within Universal who are primarily

11:31:23 12 responsible for trademark licensing?

11:31:25 13 MS. LEWIS: Same objection.

11:31:28 14 THE WITNESS: Primarily responsible?

11:31:30 15 I mean, once again, are you talking

11:31:33 16 about actually creating the license, itself?

11:31:33 17 BY MR. ISER:

11:31:36 18 Q. Yes.

11:31:37 19 A. Primarily responsible?

11:31:40 20 There's a person that seems to be doing

11:31:42 21 most of that presently.

11:31:43 22 Q. Okay. Who is that person?

11:31:45 23 A. Joy Teitel.

11:31:47 24 Q. First name is Joey?

11:31:50 25 A. Joy, J-o-y.

WILLIAM WADDELL

11:31:51 1 Q. Can you spell the last name?
11:31:53 2 A. T-e-i-t-e-l.
11:31:56 3 Q. And does Joy Teitel, is she a lawyer?
11:32:01 4 A. Yes.
11:32:01 5 Q. Does she also work for UME?
11:32:05 6 A. Yes, she reports to me.
11:32:06 7 Q. How long has Joy Teitel been the person
11:32:33 8 who has ended up doing most of the trademark work?
11:32:37 9 A. Well, she's been employed since January
11:32:39 10 of this year, 2008.
11:32:46 11 Q. Prior to Joy Teitel joining the company,
11:32:50 12 was there a person within UME who seemed to be the
11:32:57 13 person who did most of the trademark licensing work?
11:33:01 14 A. Once again, talking about the hands-on?
11:33:04 15 Q. Yes.
11:33:05 16 A. Yes, a woman named Karen Weinberger.
11:33:09 17 Q. Did Ms. Weinberger also report to you?
11:33:14 18 A. She did not.
11:33:15 19 Q. Was Karen Weinberger a lawyer --
11:33:23 20 A. Yes.
11:33:23 21 Q. -- or is she a lawyer?
11:33:24 22 A. She still is, yes.
11:33:27 23 Q. Is she still within UME?
11:33:30 24 A. No.
11:33:31 25 Q. Do you know where she's employed now?

WILLIAM WADDELL

11:33:32 1 A. Yes.

11:33:33 2 Q. Where is that?

11:33:33 3 A. Warner Music Group.

11:33:34 4 Q. For how long prior to Joy Teitel

11:33:45 5 taking over these trademark responsibilities did

11:33:49 6 Karen Weinberger have those tasks?

11:33:57 7 A. Well, pretty much during the time that

11:34:00 8 she was employed at UME.

11:34:03 9 And I believe that she was employed

11:34:06 10 there for a little better than two years, but that's

11:34:10 11 my best estimate.

11:34:11 12 Q. Who was responsibility for --

11:34:26 13 Strike that.

11:34:27 14 Who was responsible for the trademark

11:34:29 15 work within Universal prior to Karen Weinberger?

11:34:34 16 MS. LEWIS: Objection. Vague and ambiguous.

11:34:44 17 THE WITNESS: I -- I'm not sure.

11:34:46 18 Lori Froeling.

11:34:50 19 BY MR. ISER:

11:35:03 20 Q. Was Ms. Froeling a lawyer?

11:35:05 21 A. Yes.

11:35:05 22 Q. Do you know where she's employed today?

11:35:08 23 A. I don't believe she is.

11:35:09 24 Q. And to whom do you report?

11:35:32 25 A. Jeff Harleston.

WILLIAM WADDELL

11:35:38 1 Q. And what is his position?
11:35:39 2 A. He is --
11:35:42 3 His title?
11:35:43 4 Q. Yes.
11:35:44 5 A. I believe is senior vice president.
11:35:50 6 MS. LEWIS: If you know.
11:35:50 7 BY MR. ISER:
11:35:54 8 Q. Senior vice president of?
11:35:56 9 A. Of Universal Music Group. I'm not sure.
11:35:58 10 Q. And what are Mr. Harleston's
11:36:05 11 responsibilities?
11:36:07 12 MS. LEWIS: Objection. Calls for
11:36:08 13 speculation.
11:36:08 14 THE WITNESS: Yeah, I really don't know.
11:36:10 15 I know that -- I know that he's
11:36:12 16 responsible for overseeing me.
11:36:14 17 BY MR. ISER:
11:36:14 18 Q. Is he a lawyer?
11:36:15 19 A. Yes.
11:36:15 20 Q. Is he within the legal part of the
11:36:18 21 company?
11:36:19 22 MS. LEWIS: Objection. Vague and ambiguous.
11:36:22 23 THE WITNESS: Yeah, I don't know. I don't
11:36:24 24 know what you mean by that.
11:36:24 25 / / /

WILLIAM WADDELL

11:36:24 1 BY MR. ISER:

11:36:25 2 Q. Well, is there a legal function within
11:36:29 3 Universal Music Group?

11:36:32 4 A. I think you're asking is there like a
11:36:34 5 standalone legal department?

11:36:38 6 Q. Standalone or otherwise.

11:36:39 7 Is there a legal department within
11:36:41 8 Universal Music Group?

11:36:43 9 A. Well, there are a bunch of them.

11:36:45 10 Q. Okay. And which one is Mr. Harleston
11:36:48 11 involved with?

11:36:51 12 A. Well, I don't know -- I wouldn't call it
11:36:53 13 a legal group.

11:36:54 14 Q. Okay.

11:36:59 15 A. Because I think it's a mix of lawyers
11:37:01 16 and nonlawyers.

11:37:02 17 But -- I really can't answer you the way
11:37:09 18 you want, I don't think.

11:37:10 19 Q. I'm just asking you of your
11:37:13 20 understanding of what Mr. Harleston's responsibilities
11:37:15 21 are.

11:37:16 22 MS. LEWIS: Objection. Asked and answered.

11:37:18 23 THE WITNESS: Yeah.

11:37:21 24 BY MR. ISER:

11:37:21 25 Q: No, you can actually answer that for me.

WILLIAM WADDELL

11:37:24 1 A. Well, I know -- like I said, one of the
11:37:26 2 responsibilities is to oversee me.
11:37:27 3 Q. Yes?
11:37:28 4 A. And I'm aware that he has other
11:37:30 5 responsibilities. I'm not exactly sure what they are.
11:37:33 6 Q. Are you sure --
11:37:34 7 Strike that.
11:37:35 8 Are you aware of any other
11:37:36 9 responsibilities that Mr. Harleston has other than
11:37:39 10 overseeing you?
11:37:41 11 A. I understand that he has something to do
11:37:43 12 with government relations.
11:37:50 13 Q. Do you know to whom Mr. Harleston
11:37:52 14 reports?
11:37:53 15 A. I believe he reports to Michael Ostroff.
11:37:57 16 Q. And who is Michael Ostroff?
11:38:02 17 A. I believe he is an executive vice
11:38:06 18 president and maybe general counsel of UMG Recordings,
11:38:15 19 Inc.
11:38:15 20 Q. Other than Joy Teitel, are there any
11:38:25 21 other lawyers that report to you?
11:38:28 22 A. No.
11:38:28 23 Q. Are there any business people that
11:38:35 24 report to you?
11:38:39 25 A. No.

WILLIAM WADDELL

11:38:40 1 My assistant.

11:38:41 2 Q. Okay. Sir, are you aware that you've

11:38:56 3 been designated to be deposed today by your company as

11:39:03 4 a person most knowledgeable with respect to certain

11:39:06 5 issues in our trademark opposition proceeding?

11:39:12 6 A. Yes.

11:39:12 7 Q. Okay. And prior to being so designated,

11:39:19 8 were you even aware that this trademark proceeding was

11:39:22 9 going on?

11:39:22 10 MS. LEWIS: Objection. Argumentative.

11:39:30 11 THE WITNESS: Yes.

11:39:31 12 BY MR. ISER:

11:39:31 13 Q. Okay. And what awareness did you have

11:39:36 14 of this trademark opposition proceeding before you

11:39:39 15 were designated as a person most knowledgeable?

11:39:41 16 MS. LEWIS: Objection.

11:39:42 17 He is an attorney. I think that

11:39:43 18 probably calls for work product.

11:39:43 19 BY MR. ISER:

11:39:49 20 Q. Did you perform any work or services

11:39:51 21 with respect to this trademark opposition proceeding

11:39:54 22 before you were designated as a person most

11:39:58 23 knowledgeable?

11:40:00 24 A. No.

11:40:01 25 Q. Okay. So what information did you have

WILLIAM WADDELL

11:40:03 1 about this trademark opposition proceeding before you

11:40:06 2 were designated as a person most knowledgeable?

11:40:09 3 A. I knew that it existed.

11:40:17 4 Q. Did you know anything more than that?

11:40:20 5 A. I had been --

11:40:21 6 MS. LEWIS: And also, I'd counsel you that to

11:40:25 7 the extent that you obtained any knowledge from

11:40:25 8 talking to other attorneys at Universal, that it would

11:40:30 9 call for attorney-client communications and I'd

11:40:32 10 instruct you not to answer.

11:40:33 11 THE WITNESS: So I guess I'm not going to

11:40:36 12 answer.

11:40:36 13 BY MR. ISER:

11:40:36 14 Q. Are you saying that all the information

11:40:37 15 that you had about this proceeding, this trademark

11:40:40 16 opposition proceeding, prior to being designated as a

11:40:44 17 person most knowledgeable, 100 percent of that

11:40:49 18 information came from discussions with lawyers?

11:40:53 19 A. Yes.

11:40:53 20 Q. Okay. When did you first become aware,

11:41:00 21 sir, that you had been designated as a person most

11:41:03 22 knowledgeable?

11:41:09 23 A. In the last month or so.

11:41:24 24 Q. Have you done anything, sir, to prepare

11:41:27 25 for your deposition today?

WILLIAM WADDELL

11:41:29 1 A. Yes.

11:41:29 2 Q. Okay. Can you tell me what you've done
11:41:31 3 to prepare for your deposition?

11:41:34 4 A. I reviewed some contracts and some
11:41:43 5 financial figures.

11:41:45 6 Q. Anything else?

11:41:51 7 A. I spoke with counsel.

11:41:53 8 MS. LEWIS: And I'd caution you not to reveal
11:41:54 9 the substance of any of those communications.

11:41:56 10 BY MR. ISER:

11:41:57 11 Q. Anything else?

11:42:13 12 A. No.

11:42:13 13 Q. Which counsel did you speak --
11:42:20 14 I'm not asking you what they told you.

11:42:22 15 I'm just asking you to identify the
11:42:25 16 lawyers with whom you spoke to prepare for today.

11:42:27 17 A. Alexa and Joanne.

11:42:29 18 Q. Were they the only two lawyers you spoke
11:42:38 19 with?

11:42:39 20 A. In preparation for this deposition?

11:42:41 21 Q. Yes.

11:42:49 22 A. Yes.

11:42:49 23 Q. Okay. And when did you --

11:42:53 24 Did you do that by telephone or in a

11:42:55 25 meeting, meaning speaking to --

WILLIAM WADDELL

11:42:59 1 A. Both.

11:42:59 2 Q. Okay. Did you have an in-person meeting

11:43:04 3 with Alexa prior to today to prepare for your

11:43:08 4 deposition?

11:43:08 5 A. Yes.

11:43:08 6 Q. And how long did that meeting take

11:43:10 7 place?

11:43:12 8 A. One hour.

11:43:13 9 Q. And was Ms. Cho present during that

11:43:17 10 meeting, as well?

11:43:19 11 A. Correct.

11:43:19 12 Q. Is that the only in-person meeting

11:43:24 13 you've had with Ms. Lewis?

11:43:25 14 A. Yes.

11:43:26 15 Q. Okay. What about with Ms. Cho with

11:43:30 16 respect to this deposition?

11:43:34 17 A. Have I had other meetings with her?

11:43:35 18 Q. Yes.

11:43:36 19 A. In person?

11:43:37 20 Q. With respect to this deposition, in

11:43:39 21 person.

11:43:41 22 A. I don't know. Probably.

11:43:47 23 Q. Okay. I'm asking, just to make sure

11:43:49 24 we're clear, within the last month since you learned

11:43:51 25 you would be designated.

WILLIAM WADDELL

11:43:54 1 A. Yeah, what's difficult is I might see
11:43:56 2 Joanne at the little company cafeteria and say, "Oh,
11:43:59 3 yeah" --
11:43:59 4 MS. LEWIS: Yeah, no, no. Don't tell -- don't
11:44:02 5 say what you talked about.
11:44:03 6 THE WITNESS: Right, but --
11:44:04 7 BY MR. ISER:
11:44:04 8 Q. Okay. I'm not talking about bumping
11:44:06 9 into Joanne in the cafeteria or at the water cooler.
11:44:11 10 I'm saying you met with them for an
11:44:13 11 hour --
11:44:13 12 A. Correct.
11:44:13 13 Q. -- to prepare.
11:44:13 14 A. Correct.
11:44:14 15 Q. Was there any other meetings with
11:44:16 16 Ms. Cho where Ms. Lewis was not present, meetings
11:44:17 17 meaning you got together for the specific purpose of
11:44:19 18 talking about this deposition?
11:44:24 19 A. I don't recall.
11:44:24 20 Q. Okay.
11:44:26 21 A. In person, you're talking, face-to-face?
11:44:28 22 Q. I am at this moment, yeah.
11:44:30 23 A. Okay.
11:44:30 24 Q. You don't recall any such meeting?
11:44:33 25 A. I don't.

WILLIAM WADDELL

11:44:33 1 Q. Okay. So as you sit here today, you can
11:44:37 2 only recall the one meeting that took about an hour
11:44:39 3 where both Ms. Lewis and Ms. Cho were present?

11:44:41 4 A. Face-to-face meeting, correct.

11:44:43 5 Q. Yes.

11:44:44 6 Now, putting aside the face-to-face
11:44:46 7 meeting, did you also have a one or more telephone
11:44:49 8 conversations with Alexa Lewis to prepare for today's
11:44:53 9 deposition?

11:44:53 10 A. No, I've never spoken to Alexa on the
11:44:56 11 telephone.

11:44:56 12 Q. Okay. What about with Joanne Cho?

11:44:58 13 A. Yes, I have spoken to her on the
11:45:00 14 telephone.

11:45:00 15 Q. Okay. Did you speak with her on the
11:45:03 16 telephone for the specific purpose of preparing for
11:45:05 17 today's deposition?

11:45:08 18 A. Oh, gosh. Maybe.

11:45:12 19 Once again, you know --

11:45:13 20 I will say this, maybe just to cut to
11:45:17 21 the chase a little bit.

11:45:18 22 Most of the communications between
11:45:19 23 Joanne and I in preparation have been via e-mail.

11:45:23 24 Q. Okay.

11:45:24 25 A. There may have also been a phone call or

WILLIAM WADDELL

11:45:27 1 two. Little tough for me to actually separate the

11:45:31 2 two.

11:45:31 3 Q. Okay. Your e-mail communications with

11:45:34 4 Ms. Cho for the purpose of arranging a time for you to

11:45:38 5 prepare and to have your deposition taken, or the

11:45:43 6 substantive nature?

11:45:45 7 MS. LEWIS: Objection. That's getting into

11:45:47 8 the nature of the communications.

11:45:48 9 And I instruct you not to answer.

11:45:49 10 BY MR. ISER:

11:45:50 11 Q. Okay. Did you have any communications

11:45:54 12 with Ms. Cho for the purpose of your being

11:45:57 13 substantively prepared for today's session?

11:46:01 14 MS. LEWIS: Objection. Calls for speculation.

11:46:04 15 And also calls for attorney-client communications.

11:46:07 16 And I instruct you not to answer.

11:46:09 17 MR. ISER: I'm not asking for the content of

11:46:13 18 the communication.

11:46:14 19 I'm only asking whether or not in

11:46:16 20 addition to this one-hour in-person meeting, there

11:46:20 21 were e-mail communications of a substantive nature for

11:46:23 22 the purpose of preparing the witness for his

11:46:26 23 testimony.

11:46:26 24 I haven't asked for the content, but I

11:46:29 25 am entitled to know what he's done to prepare to be

WILLIAM WADDELL

11:46:32 1 the 30(b)6) witness as designated.

11:46:37 2 Will you let him answer that question?

11:46:39 3 MS. LEWIS: What's the question?

11:46:39 4 BY MR. ISER:

11:46:40 5 Q. The question is: Did you have any
11:46:42 6 e-mail communications with Ms. Cho for the purpose of
11:46:46 7 substantively preparing you for the testimony you're
11:46:50 8 going to give today?

11:46:52 9 A. Yes.

11:46:52 10 Q. Okay. How many such e-mail
11:47:10 11 communications were there?

11:47:12 12 MS. LEWIS: Objection. Calls for speculation.

11:47:16 13 THE WITNESS: I don't know.

11:47:16 14 BY MR. ISER:

11:47:27 15 Q. In addition to meeting with Ms. Lewis
11:47:30 16 and Ms. Cho to prepare, did you provide them with a
11:47:35 17 copy of various agreements and other documents to
11:47:38 18 review on your own?

11:47:41 19 A. Yes.

11:47:41 20 Q. And who provided those to you?

11:47:45 21 A. Joanne Cho.

11:47:45 22 Q. And did she provide those to you prior
11:47:48 23 to your meeting with Ms. Lewis and Ms. Cho?

11:47:52 24 MS. LEWIS: Objection. Vague and ambiguous.

11:47:56 25 THE WITNESS: Some. Not all.

WILLIAM WADDELL

11:47:57 1 BY MR. ISER:

11:47:57 2 Q. Okay. And did you spend time on your
11:48:00 3 own reviewing these documents?

11:48:01 4 A. Yes.

11:48:01 5 Q. Okay. Were you provided with additional
11:48:05 6 documents at your preparation meeting?

11:48:18 7 A. I don't believe so.

11:48:19 8 Q. If you can approximate for me inclusive
11:48:26 9 of your meetings --

11:48:27 10 Strike that.

11:48:27 11 If you were to approximate, sir,
11:48:29 12 inclusive of your one meeting and the time you spent
11:48:33 13 reviewing documents and the time you spent
11:48:36 14 communicating with Ms. Cho by e-mail, how long have
11:48:39 15 you spent total in preparing for your testimony today?

11:48:49 16 A. Two-and-a-half to three hours.

11:48:51 17 Q. Okay. We marked at an earlier
11:49:14 18 deposition as Exhibit 100 the Amended Notice Of
11:49:20 19 Deposition of Opposing UMG Recordings, Inc.

11:49:23 20 I'm just going to give you a copy of
11:49:27 21 that so you can look at it. I'm not gone to remark it
11:49:32 22 because it's been marked already.

11:49:33 23 And it's my understanding, sir, that
11:49:35 24 you've been designated to testify with respect to two
11:49:39 25 of the topics that are set forth here, and these are

WILLIAM WADDELL

11:49:42 1 Topics 1 and 5.

11:49:47 2 MS. LEWIS: Can I have a copy, as well?

11:49:48 3 MR. ISER: Sure.

11:49:52 4 MS. LEWIS: Thank you.

11:49:55 5 MR. ISER: And, Counsel, can you confirm for

11:49:57 6 me that that is the correct designation for this

11:50:00 7 witness, 1 and 5?

11:50:01 8 MS. LEWIS: Well, it's -- 1 is a partial

11:50:04 9 designation.

11:50:04 10 As you know, Jeff Moskow testified as to

11:50:06 11 some aspects of 1 in our previous deposition session.

11:50:11 12 MR. ISER: Okay.

11:50:12 13 And also 5?

11:50:13 14 MS. LEWIS: Yes.

11:50:14 15 MR. ISER: Is the witness being designated

11:50:16 16 with respect to any categories other than 1 and 5?

11:50:19 17 MS. LEWIS: I don't believe so, no.

11:50:20 18 BY MR. ISER:

11:51:10 19 Q. Sir, have you ever been to the

11:51:12 20 Motown Store that's at the Detroit Michigan Airport?

11:51:16 21 A. No.

11:51:16 22 Q. Let me show you what's been marked as

11:51:46 23 Exhibit 101 at a previous deposition.

11:51:50 24 For the record, Exhibit 101 is a

11:51:57 25 document entitled "Intellectual Property License

WILLIAM WADDELL

11:52:00 1 Agreement," dated as of December 1, 2001, between
11:52:05 2 Motown Record Company and CA -- both caps -- CA ONE,
11:52:12 3 O-N-E, Services, Inc.
11:52:32 4 Mr. Waddell, have you ever seen
11:52:35 5 Exhibit 101 before?
11:52:38 6 A. Yes and no.
11:52:43 7 Q. Okay. I'll buy yes and no.
11:52:46 8 What do you mean by that?
11:52:47 9 A. I think I've seen the exhibit with
11:52:53 10 respect to pages marked UMG 00141 through 162, but I
11:53:04 11 don't recall ever seeing the last four pages of the
11:53:11 12 exhibit.
11:53:11 13 And -- in other words, I've seen the
11:53:20 14 contract.
11:53:20 15 Q. Okay. Did you see the contract prior to
11:53:25 16 preparing for this deposition?
11:53:27 17 A. No.
11:53:27 18 Q. So your sole familiarity with this
11:53:33 19 contract is based on your review in preparation for
11:53:38 20 this deposition?
11:53:39 21 A. That's correct.
11:53:39 22 Q. Okay. And prior to this deposition,
11:53:41 23 other than counsel, did you discuss any aspect of this
11:53:45 24 contract with anyone else at Universal other than
11:53:48 25 Ms. Cho or Ms. Lewis?

WILLIAM WADDELL

11:53:54 1 A. I don't believe so.

11:53:55 2 Q. Okay. Can you tell me what this

11:54:01 3 agreement relates to?

11:54:04 4 A. I understand that it relates to the

11:54:08 5 license of the Motown trademark to this entity,

11:54:13 6 California ONE, for use in a store at the

11:54:19 7 Detroit Airport.

11:54:26 8 Q. Do you know who negotiated this license

11:54:28 9 on behalf of Motown Record Company?

11:54:35 10 A. I can see who signed the agreement. But

11:54:37 11 other than that, no, I have no idea.

11:54:38 12 Q. And on Page 19, you concede that it was

11:54:44 13 signed by Michael Ostroff?

11:54:47 14 A. Yes, that's correct.

11:54:48 15 Q. Have you ever discussed this agreement

11:54:50 16 with Michael Ostroff?

11:54:52 17 A. I have not.

11:54:52 18 Q. Do you know if this agreement relates

11:54:56 19 solely to the use of the Motown mark in conjunction

11:54:59 20 with a store or also relates to merchandise for the

11:55:03 21 store?

11:55:06 22 A. I think the agreement speaks to itself.

11:55:09 23 But my understanding is that, yes, it

11:55:11 24 relates to merchandise, as well.

11:55:12 25 Q. Do you know if this agreement,

WILLIAM WADDELL

11:55:37 1 Exhibit 101, is still in effect?

11:55:41 2 A. I understand that it is.

11:55:42 3 Q. Okay. When you say "I understand that

11:55:44 4 it is," what is your understanding based on?

11:55:46 5 A. That they're still paying us fees

11:55:49 6 associated with the agreement and that by the terms of

11:55:52 7 the agreement, I believe that the term is still active

11:55:57 8 or operative.

11:55:59 9 Q. Okay. And what specific provision are

11:56:02 10 you referring to when you talk about term?

11:56:07 11 A. I believe Article III term.

11:56:28 12 Q. The initial term of this agreement was

11:56:30 13 five years following the opening dates of the outlet.

11:56:33 14 Correct?

11:56:36 15 A. That's what it says in Paragraph 3.1.

11:56:38 16 Correct.

11:56:38 17 Q. Do you know what the opening date of the

11:56:41 18 outlet was?

11:56:42 19 A. I do not.

11:56:42 20 Q. It also provides in Section 3.1 that the

11:56:50 21 term of this agreement shall be automatically extended

11:56:53 22 for a further period of three years upon written

11:56:56 23 notice from licensee to licensor.

11:57:00 24 Do you know whether or not the agreement

11:57:03 25 is currently in the extension period?

WILLIAM WADDELL

11:57:10 1 A. I don't.

11:57:11 2 Q. So as you sit here today, you don't know
11:57:16 3 whether it's in the initial period right now or the
11:57:18 4 term has been extended?

11:57:20 5 A. Well, I don't really know that.

11:57:25 6 But I think that it's likely in the
11:57:28 7 extension period, because I believe we received
11:57:31 8 royalties for longer than five years.

11:57:37 9 Q. And how do you know that?

11:57:39 10 A. Because I looked at royalty statements
11:57:41 11 or license fee statements, whatever, setting forth
11:57:45 12 what this company had paid us pursuant to this
11:57:50 13 agreement.

11:57:50 14 Q. Do you know whether or not the licensee
11:57:55 15 here has located any stores other than at the
11:58:02 16 Detroit Airport?

11:58:03 17 A. I do not.

11:58:03 18 Q. Do you know why the stores are located
11:58:07 19 at the Detroit Airport?

11:58:09 20 A. I do not.

11:58:10 21 Q. On an annual basis, sir, do you know the
11:58:22 22 amount of royalties received by your company with
11:58:26 23 respect to this license?

11:58:29 24 A. Looking at the figures, they seem to be
11:58:32 25 between about 40- to \$50,000 a year.

WILLIAM WADDELL

11:58:35 1 Q. Do you know how many stores are located
11:59:10 2 at the Detroit Airport, how many Motown stores?
11:59:15 3 A. No.
11:59:15 4 Q. Do you have any reason to believe it's
11:59:17 5 more than one?
11:59:18 6 A. No.
11:59:18 7 Q. Sir, have you ever lived in Detroit?
11:59:35 8 A. No.
11:59:35 9 Q. Okay. Has anyone explained to you why
11:59:49 10 this licensee located its store in the Detroit
11:59:54 11 Airport?
11:59:55 12 A. No.
11:59:55 13 Q. Are you aware of any connection between
12:00:04 14 Motown Records and the city of Detroit?
12:00:07 15 A. Yes.
12:00:07 16 Q. And what connection are you aware of?
12:00:10 17 A. That I believe Detroit is where
12:00:14 18 Motown Records was located.
12:00:32 19 Q. Are you aware, sir, that Motown is a
12:00:36 20 nickname for the city of Detroit?
12:00:38 21 MS. LEWIS: Objection. I think we're straying
12:00:40 22 off of the categories for which this witness has been
12:00:43 23 designated.
12:00:44 24 BY MR. ISER:
12:00:45 25 Q. You can answer my question.

WILLIAM WADDELL

12:00:46 1 A. Motown is a nickname for Detroit?

12:00:49 2 Q. For the city of Detroit, yes.

12:00:50 3 Are you aware of that?

12:00:51 4 A. No.

12:00:51 5 Q. Never heard that?

12:00:54 6 A. That Detroit has a nickname?

12:00:56 7 Q. No.

12:00:57 8 A. I've never heard that.

12:00:58 9 Q. I'm asking you if you've ever heard that

12:01:01 10 Motown is a nickname that refers to the city of

12:01:06 11 Detroit.

12:01:07 12 MS. LEWIS: Objection. Asked and answered.

12:01:12 13 THE WITNESS: No, never heard that anyone

12:01:13 14 thought that Detroit had a nickname and the nickname

12:01:16 15 was Motown.

12:01:16 16 BY MR. ISER:

12:01:16 17 Q. Okay. Have you ever heard any --

12:01:19 18 Strike that.

12:01:20 19 Have you ever heard that people refer to

12:01:23 20 the city of Detroit as Motown?

12:01:30 21 A. In my life, has someone said that to me?

12:01:36 22 Q. I'll start with that.

12:01:37 23 A. I don't know.

12:01:40 24 Q. Maybe, maybe not.

12:01:41 25 You just can't remember?

WILLIAM WADDELL

12:01:42 1 A. I have no memory of that ever being said
12:01:45 2 to me.

12:01:45 3 Q. Have you ever been to Detroit?

12:01:46 4 A. Never.

12:01:47 5 Q. Okay. Have you ever heard that the city
12:02:00 6 of Detroit has been referred to as Motor City?

12:02:04 7 MS. LEWIS: Objection, Counsel.

12:02:06 8 Can you explain to me what this line of
12:02:09 9 questioning has to do with the topics for which he's
12:02:11 10 been designated, which is namely enforcement and the
12:02:16 11 license agreements?

12:02:19 12 MR. ISER: I think the question I just asked
12:02:20 13 is directly relevant to Topic Number 1, use of the
12:02:25 14 word "Motown" in --

12:02:29 15 MS. LEWIS: Yeah, but as you know, as I
12:02:31 16 mentioned earlier, Topic 1 was also covered by
12:02:35 17 Mr. Moskow.

12:02:35 18 And what Mr. Waddell is primarily here
12:02:39 19 for is to testify regarding the license agreements.

12:02:44 20 BY MR. ISER:

12:02:45 21 Q. Okay. My question stands.

12:02:49 22 Do you have it in mind?

12:02:51 23 A. Have I ever heard someone say

12:02:53 24 "Motor City"?

12:02:55 25 Q. People referring to Detroit as

WILLIAM WADDELL

12:02:57 1 Motor City.

12:02:59 2 A. I believe I have.

12:03:00 3 Q. When you told me that you have, in

12:03:50 4 preparation for deposition, reviewed documents showing

12:03:57 5 the royalty income with respect to this license,

12:04:01 6 Exhibit 101, can you identify for me what those

12:04:04 7 documents were?

12:04:06 8 A. Yes.

12:04:07 9 They were in an Excel spreadsheet

12:04:12 10 format, I believe for the last five and a half years

12:04:18 11 or so, setting forth the fee that we had received on a

12:04:26 12 monthly basis in connection with this contract.

12:04:29 13 Q. And where did you obtain this document?

12:04:50 14 A. I believe I received it from our finance

12:04:59 15 team.

12:05:04 16 Q. Was there a specific person that you

12:05:06 17 talked to in order to obtain this document?

12:05:09 18 A. Yes.

12:05:09 19 Q. Who is that person?

12:05:11 20 A. Paul Herskovitz.

12:05:15 21 Q. Could you spell the last name for the

12:05:18 22 court reporter?

12:05:18 23 A. H-e-r-s-k-o-v-i-t-z.

12:05:21 24 Q. Did you speak to Mr. Herskovitz on your

12:05:29 25 own, or with counsel?

WILLIAM WADDELL

12:05:32 1 A. On my own.

12:05:34 2 Q. Okay. And that was solely in
12:05:38 3 preparation for this deposition?

12:05:39 4 A. That's correct.

12:05:40 5 Q. And do you still have that Excel
12:05:42 6 spreadsheet in your office?

12:05:44 7 A. Yeah.

12:05:52 8 MR. ISER: Counsel, will you agree to produce
12:05:55 9 that document to us?

12:05:56 10 MS. LEWIS: To the extent it isn't otherwise
12:05:58 11 privileged, we would produce it.

12:06:01 12 I'm going to need to investigate whether
12:06:04 13 or not there would be a privilege barring its
12:06:06 14 production.

12:06:08 15 MR. ISER: Well, I guess -- all right.

12:06:17 16 I think it's responsive to our document
12:06:20 17 requests, so --

12:06:20 18 MS. LEWIS: But to the extent that it was
12:06:22 19 prepared by the finance department at the request of
12:06:25 20 counsel, then it would be work product and privileged.

12:06:25 21 BY MR. ISER:

12:06:31 22 Q. Did you ask Mr. Herskovitz to prepare
12:06:33 23 this document for you, sir?

12:06:34 24 MS. LEWIS: Objection. Attorney-client
12:06:36 25 communication.

WILLIAM WADDELL

12:06:36 1 MR. ISER: No.

12:06:38 2 THE WITNESS: Yes.

12:06:38 3 BY MR. ISER:

12:06:38 4 Q. Okay. And that was for the purpose of

12:06:42 5 you preparing for this deposition?

12:06:45 6 A. Yes.

12:07:36 7 MR. ISER: I'm going to mark another document

12:07:38 8 now, but I don't --

12:07:40 9 Let's see if I can tell where we left

12:07:42 10 off.

12:07:47 11 Yes, I'm going to mark as Exhibit 103

12:07:50 12 this document here, please.

12:07:52 13 Here's a copy for you, Counsel.

12:07:52 14 (Whereupon Exhibit 103 was marked for

12:07:52 15 identification)

12:08:27 16 MR. ISER: For the record, Exhibit 103 is a

12:08:31 17 document entitled "Master Merchandising License

12:08:36 18 Agreement" dated October 31, 2002, between

12:08:42 19 Universal Music Enterprises and Late for the Sky

12:08:46 20 Production Company.

12:08:48 21 And it bears Bates label UMG 1 through

12:08:53 22 23.

12:08:56 23 Q. Mr. Waddell, have you ever seen this

12:08:58 24 document before?

12:08:58 25 A. Yes.

WILLIAM WADDELL

12:08:58 1 Q. Did you see it prior to preparing for
12:09:02 2 this deposition?

12:09:03 3 A. No.

12:09:03 4 Q. Is it correct that the first time you
12:09:06 5 laid eyes on this document was specifically to prepare
12:09:10 6 for this deposition?

12:09:11 7 A. That's correct.

12:09:11 8 Q. And can you tell me to what this
12:09:16 9 document relates?

12:09:19 10 A. This document relates to the license of
12:09:22 11 the Motown trademark in connection with the creation
12:09:26 12 of a Motownopoly board game.

12:09:39 13 Q. Were you aware of this license prior to
12:09:41 14 preparing for this deposition?

12:09:42 15 A. Yes.

12:09:44 16 Q. Do you have a copy of the Motownopoly
12:09:48 17 board game?

12:09:50 18 A. Yes.

12:09:50 19 Q. Is this license still in effect?

12:09:56 20 A. I'm not sure.

12:09:57 21 Q. Are you aware if there is an existing
12:10:00 22 license currently for a Motownopoly board game?

12:10:08 23 A. I don't know.

12:10:11 24 Q. If you wanted to find out, who would you
12:10:15 25 ask?

WILLIAM WADDELL

12:10:18 1 A. Well, I'd probably search the file
12:10:22 2 first.
12:10:23 3 Q. To find out what?
12:10:25 4 A. To see if there's any documents in there
12:10:27 5 pertaining to the term and whether it's active and --
12:10:32 6 or for some reason been terminated.
12:10:38 7 Q. So is it correct as you sit here today,
12:10:40 8 you do not know whether it's active or not?
12:10:45 9 A. I don't.
12:10:45 10 Q. And as you sit here today, do you know
12:10:48 11 whether this agreement has been terminated for any
12:10:50 12 reason?
12:10:50 13 A. I don't know that.
12:10:51 14 Q. As you sit here today, do you know
12:10:53 15 whether or not this agreement has simply expired?
12:10:57 16 A. I don't know that, either.
12:10:58 17 Q. Do you know the last time that your
12:11:03 18 company received any royalties with respect to a
12:11:05 19 Motownopoly game?
12:11:10 20 A. No, I don't know the date. I know that
12:11:16 21 we received some payments.
12:11:17 22 Q. When is the last time that your company
12:11:20 23 received any payments?
12:11:21 24 A. I don't know the date.
12:11:22 25 Q. Was it in 2008?

WILLIAM WADDELL

12:11:24 1 A. I don't know.

12:11:25 2 Q. Okay. Did you review any documents
12:11:27 3 regarding royalties received by your company with
12:11:31 4 respect to the Motownopoly board game?

12:11:34 5 A. Yes.

12:11:35 6 Q. And was this another Excel spreadsheet?

12:11:40 7 A. No, this was some PDF copies of some
12:11:44 8 checks we had received.

12:11:45 9 Q. Were you provided with these checks to
12:11:59 10 review for the purpose of preparing for your
12:12:00 11 deposition?

12:12:00 12 A. Correct.

12:12:01 13 Q. Is it correct, sir, that this
12:12:16 14 document was signed by Lori Froeling on behalf of
12:12:24 15 Universal Music Enterprises?

12:12:26 16 MS. LEWIS: Objection. The document speaks
12:12:28 17 for itself.

12:12:36 18 THE WITNESS: On page S1, I can recognize that
12:12:42 19 that's Lori's signature.

12:12:43 20 BY MR. ISER:

12:12:44 21 Q. You're referring to S21?

12:12:50 22 MS. LEWIS: Yeah, it might be easier to refer
12:12:53 23 to the Bates number.

12:12:53 24 THE WITNESS: Yeah, well --

12:12:55 25 / / /

WILLIAM WADDELL

12:12:55 1 BY MR. ISER:
12:12:58 2 Q. We're going to refer to Bates numbers so
12:13:00 3 as to avoid confusion as to page numbers.
12:13:02 4 A. I was actually looking at UMG 00022
12:13:06 5 Bates number.
12:13:07 6 Q. That's the Schedule A.
12:13:08 7 Correct?
12:13:09 8 A. That's Lori's signature.
12:13:10 9 And her signature is also on UMG 00021.
12:13:14 10 Q. Okay. Let's stay with Bates number
12:13:26 11 UMG 22.
12:13:32 12 I'd refer you to the -- there's a list
12:13:41 13 you'll see on the left of various topics for the
12:13:44 14 Schedule A. One of them is License Territory.
12:13:47 15 Do you see that?
12:13:48 16 A. Yes.
12:13:48 17 Q. Okay. License Territory, it says three
12:13:51 18 years, expires 12-31-2005.
12:13:54 19 Do you see that?
12:13:54 20 A. Yes, I do.
12:13:55 21 Q. Okay. And it's actually not a license
12:14:00 22 territory. That's really the term.
12:14:01 23 Correct?
12:14:01 24 A. One would think so.
12:14:03 25 Q. Okay. So it says three years, expires

WILLIAM WADDELL

12:14:06 1 12-31-2005.
12:14:08 2 Do you see that?
12:14:09 3 A. Yes, I do.
12:14:09 4 Q. Do you have any reason to believe that's
12:14:11 5 not true?
12:14:11 6 A. No.
12:14:12 7 Q. Are you aware if this agreement was
12:14:16 8 extended beyond December 31st, 2005?
12:14:20 9 A. I'm --
12:14:20 10 MS. LEWIS: Objection. Asked and answered.
12:14:23 11 THE WITNESS: I'm unaware of that.
12:14:24 12 BY MR. ISER:
12:14:24 13 Q. Okay. Do you know the total amount of
12:14:40 14 royalties that your company received with respect to
12:14:44 15 this license, Exhibit 103?
12:14:51 16 A. I -- I probably do.
12:14:55 17 Q. Okay. Can you tell me what that number?
12:15:00 18 A. Well, I believe that we did receive --
12:15:04 19 Once again looking at UMG 00022, I
12:15:06 20 believe we received two payments: One for 12,500, and
12:15:11 21 the second for \$25,000.
12:15:30 22 Q. Now, the \$25,000 set forth on
12:15:33 23 Schedule A, which is Bates number UMG 22, that's a
12:15:33 24 Guaranty.
12:15:38 25 Correct?

WILLIAM WADDELL

12:15:42 1 A. That's what the document says.
12:15:43 2 Correct.
12:15:43 3 Q. Okay. Did your company receive that
12:15:46 4 guaranty in one lump payment, or did it receive that
12:15:49 5 guaranty paid out over time through receipt of
12:15:52 6 royalties?
12:15:52 7 A. I believe it was a one-time payment.
12:15:54 8 Q. Okay. Did your company receive any
12:15:59 9 monies in excess of the guaranty?
12:16:02 10 A. I don't know. Not based on the
12:16:06 11 documents I looked at.
12:16:06 12 Q. Okay. So to the best of your knowledge,
12:16:31 13 the total amount of money received by your company
12:16:36 14 under this license, Exhibit 103, was the sum of the
12:16:40 15 advance of 12,500 plus the guaranty of \$25,000?
12:16:44 16 A. That's correct.
12:16:45 17 Q. Do you know how many Motownopoly games
12:16:58 18 were sold?
12:16:59 19 A. I do not.
12:18:04 20 MR. ISER: Would you mark this as the next
12:18:06 21 exhibit.
12:18:06 22 (Whereupon Exhibit 104 was marked for
12:18:20 23 identification)
12:18:20 24 MR. ISER: That will be 104?
12:18:23 25 THE REPORTER: Yes.

WILLIAM WADDELL

12:18:29 1 BY MR. ISER:

12:18:30 2 Q. I'm showing the witness Exhibit 104,
12:18:32 3 which is a two-page document, bearing Bates numbers
12:18:36 4 UMG 107 and 108.

12:18:44 5 BY MR. ISER:

12:18:45 6 Q. Mr. Waddell, have you ever seen this
12:18:47 7 document before?

12:18:47 8 A. I don't think so.

12:18:48 9 Q. Take a look at the second page of
12:18:56 10 Exhibit 108 [sic].

12:19:01 11 This is an October 25th, 2005 document
12:19:04 12 which is entitled "Third Quarter Licensing Report -
12:19:07 13 2005".

12:19:08 14 Do you see that?

12:19:09 15 A. Yes.

12:19:09 16 Q. Have you seen any quarterly licensing
12:19:12 17 reports with respect to the Motownopoly game prior
12:19:16 18 this very moment when I showed you this one?

12:19:20 19 A. I don't think so.

12:19:21 20 Q. Did you review any licensing reports
12:19:23 21 prior this deposition?

12:19:26 22 A. Like this one?

12:19:27 23 Q. Like this one, or anyone like it.

12:19:31 24 A. Not really.

12:19:32 25 Q. Okay. Were you given any quarterly

WILLIAM WADDELL

12:19:36 1 licensing reports to review in preparation for your
12:19:39 2 deposition?
12:19:39 3 A. I might have.
12:19:39 4 Q. But as you sit here right now, you can't
12:19:43 5 tell me one way or the other?
12:19:45 6 A. You know, I was given a stack of
12:19:47 7 documents.
12:19:47 8 Right?
12:19:48 9 I looked -- I thumbed through them.
12:19:53 10 So have I -- my eyes been laid on this
12:19:59 11 thing? Maybe.
12:20:00 12 Did I study it? No.
12:20:02 13 Q. You do recall as you sit here having
12:20:05 14 seen a check for \$12,000 and a check for \$25,000?
12:20:05 15 A. I do have that memory.
12:20:07 16 Q. Okay. Do you have those documents in
12:20:13 17 your office, as well?
12:20:14 18 Namely, the check -- a copy of the check
12:20:17 19 for 12,000 and a copy of the check for \$25,000?
12:20:20 20 A. Yes.
12:20:23 21 MR. ISER: Once again, Counsel, I'd ask that
12:20:26 22 those documents be produced because they are
12:20:28 23 responsive to our document request in the case.
12:20:34 24 And in addition, if there are other
12:20:35 25 quarterly royalty reports, I believe they should be

WILLIAM WADDELL

12:20:39 1 produced, as well.

12:20:39 2 THE REPORTER: Counsel, whenever it's a

12:20:55 3 convenient time for a quick break.

12:20:55 4 MR. ISER: You need to take a break?

12:20:55 5 Okay, yeah.

12:20:55 6 Why don't we take a short break for the

12:21:03 7 restroom, and we'll be right back.

12:21:06 8 THE VIDEOGRAPHER: Going off the record.

12:21:08 9 The time is 12:21 hours.

12:31:44 10 (Whereupon a recess was taken)

12:32:59 11 THE VIDEOGRAPHER: Back on the record.

12:33:01 12 The time is 12:33 hours.

12:33:03 13 MR. ISER: Okay. We're back on the record.

12:33:06 14 I'd like to mark as the next exhibit in

12:33:08 15 order this document here.

12:33:08 16 (Whereupon Exhibit 105 was marked for

12:34:02 17 identification)

12:34:02 18 MR. ISER: I'm going to give you this as 105,

12:34:06 19 would it be, which is a group of documents to make our

12:34:09 20 time go a little bit more quickly.

12:34:11 21 This is 105.

12:34:28 22 For the record, Exhibit 105 is actually

12:34:34 23 a collection of documents, the first one of which is

12:34:37 24 entitled "Representation Agreement", dated June 7,

12:34:45 25 2002 between Universal Music Enterprises and

WILLIAM WADDELL

12:34:47 1 The Stronghold Group. And it bears Bates numbers UMG
12:34:52 2 54 through 66.

12:34:56 3 The second document in this package is
12:35:00 4 "Amendment Number 1 To Representation Agreement",
12:35:02 5 dated June 7, 2002, which bears Bates Numbers 67
12:35:08 6 through 68.

12:35:11 7 The third document in the set is a
12:35:20 8 two-page document entitled "Vendor Address Book
12:35:23 9 Maintenance Form," bearing Bates Number 78 and 79.

12:35:31 10 The next document in the package is a
12:35:35 11 one-page e-mail bearing Bates Number UMG 73.

12:35:41 12 And then the next document in this
12:35:43 13 package are two pages, which appear to be a fax, dated
12:35:51 14 June 16, 2004, bearing Bates Number UMG 69 and 70.

12:36:04 15 And then finally, the last document in
12:36:07 16 this set appears to be -- well, it's two other
12:36:15 17 documents -- Bates Number UMG 71, which is entitled
12:36:19 18 "Universal Music Group, Inc. General Journal."

12:36:22 19 And then finally, there's a document,
12:36:24 20 UMG 72, which also says "Journal Entries" on it.

12:36:47 21 Q. Okay. With respect to the first
12:36:49 22 document in the group, the Representation Agreement,
12:36:52 23 Mr. Waddell, have you seen this before?

12:36:54 24 A. Yes.

12:36:54 25 Q. And did you see it for the first time in

WILLIAM WADDELL

12:37:00 1 preparation for your deposition?

12:37:00 2 A. Yes.

12:37:00 3 Q. Had you ever seen it before that?

12:37:03 4 A. No.

12:37:04 5 Q. What is The Stronghold Group, which is

12:37:08 6 indicated here as a party to this contract?

12:37:12 7 A. It's my understanding they're a company

12:37:14 8 that, you know, goes out and finds licensing

12:37:19 9 opportunities.

12:37:20 10 Q. Have you ever dealt, yourself, with

12:37:22 11 The Stronghold Group?

12:37:24 12 A. No.

12:37:24 13 Q. Do you know what The Stronghold Group

12:37:36 14 did with Universal Music Enterprises pursuant to this

12:37:41 15 agreement?

12:37:41 16 MS. LEWIS: Objection. Vague and ambiguous.

12:37:41 17 BY MR. ISER:

12:37:45 18 Q. Did you understand my question?

12:37:46 19 A. Not really.

12:37:46 20 Q. Okay. Do you have any knowledge of what

12:37:51 21 actions or activities that The Stronghold Group

12:37:55 22 undertook on behalf of Universal Music Group pursuant

12:37:59 23 to this agreement?

12:38:02 24 A. Only by reading the documents, yes.

12:38:05 25 Q. Okay. Well, what is your answer based

WILLIAM WADDELL

12:38:08 1 upon your reading of the documents?

12:38:09 2 A. It's my understanding that they must

12:38:11 3 have found the licensing opportunity in connection

12:38:14 4 with the Motownopoly game..

12:38:18 5 Q. Did they do anything else to your

12:38:20 6 knowledge?

12:38:26 7 A. No.

12:38:47 8 Q. Have you spoken with anybody within your

12:38:49 9 organization concerning The Stronghold Group in

12:38:54 10 preparation --

12:38:54 11 A. Yes.

12:38:55 12 Q. -- for this depo?

12:38:56 13 A. In preparation for the deposition?

12:39:00 14 Other than counsel?

12:39:01 15 Q. Other than counsel, yes.

12:39:03 16 A. No.

12:39:04 17 Q. Okay. Did Stronghold Group receive a

12:39:14 18 fee for defining the opportunity of the Motownopoly

12:39:19 19 game?

12:39:20 20 A. It would appear so.

12:39:22 21 Q. And when you say it would appear so,

12:39:25 22 what are you referring to?

12:39:32 23 A. On Page Bates UMG 70, there's a fax

12:39:41 24 cover sheet with a note to Lori indicating that

12:39:50 25 The Stronghold Group is looking for their commission

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12:39:53 1 for the Late for the Sky deal, which I understand to
12:40:02 2 be the deal for Motownopoly.
12:40:05 3 Q. Okay. And looking at UMG 71 --
12:40:12 4 A. Yes?
12:40:13 5 Q. -- can you tell the amount of the
12:40:14 6 commission that The Stronghold Group received with
12:40:17 7 respect to the Motownopoly deal?
12:40:26 8 A. You know, if I'm reading this correctly,
12:40:28 9 it looks like they were paid \$18,750.
12:40:32 10 But I -- I'm not an accountant. I'm not
12:40:35 11 really familiar with this.
12:40:36 12 Q. Were they paid that by Universal Music,
12:40:38 13 or were they paid that by Late for the Sky Production
12:40:48 14 Company?
12:40:50 15 A. I don't know.
12:40:51 16 Q. So do you believe that of the total
12:40:58 17 \$37,500 that you've testified that Universal Music
12:41:06 18 received as a result of Motownopoly, that \$18,750 of
12:41:13 19 that was paid to The Stronghold Group?
12:41:24 20 A. I'm sorry. Could you repeat the
12:41:26 21 question?
12:41:26 22 Q. Yes.
12:41:27 23 Is it your best understanding, having
12:41:29 24 been designated as the person most knowledgeable
12:41:32 25 regarding this document, these documents, the person

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12:41:35 1 most knowledgeable regarding the licensing of the
12:41:38 2 Motown mark, that The Stronghold Group received a
12:41:43 3 commission of \$18,750 paid for by Universal Music out
12:41:51 4 of the \$37,500 total proceeds that Universal received
12:41:56 5 with respect to Motownopoly?

12:42:15 6 A. I honestly don't know.

12:42:17 7 Q. Who would know that?

12:42:22 8 A. I would think our finance department
12:42:24 9 would know.

12:42:24 10 Q. If you wanted to find out, who would you
12:42:30 11 ask?

12:42:31 12 A. Paul Herskovitz.

12:43:14 13 MS. LEWIS: I don't mean to interrupt you,
12:43:16 14 Larry, but I believe that there might be other
12:43:18 15 documents that we've produced that show Stronghold's
12:43:21 16 commissions, as well.

12:43:22 17 MR. ISER: Okay.

12:43:23 18 Q. If you turn, sir, to the second document
12:43:25 19 in this package, UMG 67 and 68 --

12:43:31 20 A. Yes?

12:43:33 21 Q. -- can you tell me what this document
12:43:35 22 is?

12:43:39 23 A. It appears to be an amendment to the
12:43:41 24 Representation Agreement.

12:43:42 25 Q. Okay. What is the purpose of the

WILLIAM WADDELL

12:43:43 1 amendment?

12:43:49 2 MS. LEWIS: Objection. Calls for speculation,
12:43:51 3 and the document speaks for itself.

12:43:57 4 THE WITNESS: I wouldn't know nothing more
12:44:00 5 than what is set forth in the document.

12:44:09 6 MR. ISER: Yeah, I'm concerned, Counsel, that
12:44:10 7 with your objection of speculation when this is the
12:44:14 8 witness who has been designated pursuant to Federal
12:44:20 9 Rule 30(b)(6) as the person most knowledgeable --

12:44:22 10 MS. LEWIS: Yeah, actually, I think that's
12:44:23 11 probably more of a vague and ambiguous objection as
12:44:25 12 well as the document speaks for itself as to the -- I
12:44:27 13 believe you said the purpose of the document.

12:44:29 14 MR. ISER: Yeah.

12:44:30 15 Q. You have no knowledge about this
12:44:31 16 amendment, do you, sir?

12:44:34 17 A. Well, I have the amendment in front of
12:44:36 18 me and I can read it. So in that sense, I have
12:44:38 19 knowledge about it.

12:44:38 20 Q. Did you undertake any effort to discuss
12:44:45 21 this Representation Agreement internally to gain an
12:44:48 22 understanding of the relationship between
12:44:50 23 Stronghold Group and Universal Music?

12:44:53 24 MS. LEWIS: First of all, objection.

12:44:54 25 I caution you not to reveal any

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12:44:58 1 attorney-client communications.

12:44:58 2 Also, just to note for the record, as
12:45:00 3 you know, Larry, and as I believe came out on the
12:45:04 4 record in the previous deposition of Jeff Moskow, the
12:45:08 5 people who were employed by Universal that had
12:45:11 6 firsthand knowledge of this are no longer with the
12:45:13 7 company.

12:45:15 8 MR. ISER: Right.

12:45:16 9 Well. That's why we have a 30(b)(6).
12:45:20 10 And that's -- the point of that is for the witness to
12:45:22 11 obtain the information necessary to be able to
12:45:26 12 testify.

12:45:27 13 MS. LEWIS: To the best of his abilities, yes.

12:45:29 14 MR. ISER: Right.

12:45:32 15 Q. So other than what's set forth on the
12:45:36 16 document, itself -- again referring to Bates Number 67
12:45:43 17 and 68 -- you have no additional information or
12:45:45 18 understanding.

12:45:46 19 Correct?

12:45:47 20 A. That's correct.

12:45:48 21 Q. Okay. I'd like you to turn to the
12:46:01 22 document with Bates Number UMG 69, which is a letter
12:46:09 23 dated June 16, 2004.

12:46:16 24 A. Yes.

12:46:17 25 Q. It says -- it's from a Roy Doustdar of

WILLIAM WADDELL

12:46:22 1 The Stronghold Group. And the fax cover sheet
12:46:26 2 indicates it was sent to UME to Lori Froeling of UME.
12:46:33 3 In the letter, it says, "Please note
12:46:35 4 that all future representation fees due and owing
12:46:39 5 Motown licensing program secured by The Stronghold
12:46:41 6 Group under the terms of the Representation Agreement
12:46:43 7 dated as of June 7, 2002, should be henceforth made
12:46:49 8 payable to The Results Group, LLC, commencing on
12:46:52 9 June 7, 2004."
12:46:53 10 Do you see that?
12:46:54 11 A. Yes.
12:46:54 12 Q. Do you know who or what
12:46:56 13 The Results Group, LLC is?
12:47:04 14 A. No.
12:47:04 15 Q. Do you know who the author of this
12:47:07 16 letter, Roy Doustdar, is?
12:47:12 17 A. No, other than what's indicated on the
12:47:16 18 document.
12:47:17 19 Q. All right. By the way, that's spelled
12:47:24 20 D-o-u-s-t-d-a-r.
12:47:24 21 In the first line, it says, "All future
12:47:27 22 representation fees due and owing Motown licensing
12:47:31 23 programs."
12:47:33 24 Do you know what is referred to there by
12:47:35 25 Motown licensing programs?

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12:47:37 1 MS. LEWIS: Objection. The document speaks
12:47:40 2 for itself.
12:47:47 3 THE WITNESS: I think it does speak for
12:47:48 4 itself, but I think that what he's referring to is to
12:47:51 5 the extent that the Motown mark is licensed by
12:47:54 6 Stronghold, that's what he's referring to.
12:47:57 7 BY MR. ISER:
12:47:57 8 Q. Okay. And other than Motownopoly, are
12:48:00 9 you aware of any other licensing program brought to
12:48:05 10 Universal by The Stronghold Group, LLC or
12:48:09 11 The Results Group, LLC?
12:48:15 12 A. I don't know as in know for sure, but I
12:48:22 13 think they had something to do with some Adidas shoes
12:48:25 14 in the licensing.
12:48:26 15 But I'm not positive.
12:48:27 16 Q. What is the basis of your belief
12:48:29 17 regarding shoes?
12:48:32 18 A. That there was a gentleman working for
12:48:37 19 UME that in his office he had the Motownopoly game,
12:48:43 20 and he also had some Motown Adidas shoes.
12:48:52 21 Q. Who is that person?
12:48:53 22 A. Ashley Culp.
12:48:56 23 Q. Spell the last name.
12:48:57 24 A. C-u-l-p.
12:48:59 25 Q. Other than seeing the shoes in

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12:49:08 1 Mr. Culp's office, do you know whether or not there
12:49:10 2 was actually a license pursuant to which there was a
12:49:13 3 Motown shoe sold by Adidas?
12:49:16 4 A. I believe there is a license.
12:49:17 5 Q. Okay. Have you ever seen them in the
12:49:21 6 stores?
12:49:21 7 A. No.
12:49:21 8 Q. I'm just wondering if it was a
12:49:26 9 one-of-a-kind prototype, or you actually think it went
12:49:28 10 to license and shoes actually got sold.
12:49:31 11 A. I don't know if shoes got sold.
12:49:33 12 Q. Does Mr. Culp still work at Universal?
12:49:37 13 A. He does not.
12:49:37 14 Q. Do you know where he works now?
12:49:40 15 A. I think he works at MTV in New York.
12:50:01 16 MS. LEWIS: Are we done with 105?
12:50:04 17 MR. ISER: Yeah.
12:50:05 18 MS. LEWIS: Make sure you clip those back
12:50:08 19 together.
12:51:39 20 MR. ISER: Mark this as the next exhibit,
12:51:42 21 please.
12:51:42 22 (Whereupon Exhibit 106 was marked for
12:51:42 23 identification)
12:51:58 24 MR. ISER: For the record, Exhibit 106 is
12:52:07 25 another group of documents commencing with Bates

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12:52:11 1 Number UMG 24 through 47, plus UMG Bates Number 48
12:52:31 2 through 53, and also Bates Numbers UMG 135 through
12:52:43 3 140.

12:52:52 4 Q. Mr. Waddell, have you ever seen the
12:52:59 5 first document before, which is a Master
12:53:04 6 Merchandise -- strike that -- which is a Master
12:53:06 7 Merchandising License Agreement, dated February 7,
12:53:12 8 2003?

12:53:12 9 A. Yes, I've seen this before.

12:53:13 10 Q. Okay. Did you see it prior to preparing
12:53:16 11 for your deposition?

12:53:17 12 A. No.

12:53:17 13 Q. Is the first time you saw this in
12:53:20 14 preparation for your deposition?

12:53:21 15 A. Yes.

12:53:21 16 Q. Can you tell me what this document is?

12:53:26 17 A. It's a License Agreement permitting the
12:53:32 18 use of the -- looks like -- permitting use of certain
12:53:46 19 Motown trademarks in connection with a Karaoke
12:53:49 20 machine.

12:54:08 21 Q. Now, does this document respect solely
12:54:15 22 the use of trademarks, or does it also include the
12:54:20 23 licensing of master recordings for use in the Karaoke
12:54:25 24 machine?

12:55:40 25 A. It seems to be limited to the

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12:55:47 1 trademarks.
12:55:48 2 But I've not read the whole agreement,
12:55:55 3 so I'm not certain.
12:55:56 4 Q. Let me refer you to Bates Number UMG
12:55:59 5 45 --
12:56:00 6 A. Okay.
12:56:02 7 Q. -- which is Schedule A to the agreement.
12:56:05 8 Tell me when you get there.
12:56:07 9 A. I'm there, yeah.
12:56:08 10 Q. All right. It says under "Licensed
12:56:10 11 Article," "Karaoke Machine and Karaoke CDGs."
12:56:10 12 Do you see that?
12:56:14 13 A. I do.
12:56:14 14 Q. Are you familiar with the term "CDGs"?
12:56:19 15 A. I am not.
12:56:19 16 Q. Not?
12:56:20 17 A. I am not.
12:56:20 18 Q. Okay. So as you sit here today, are you
12:56:34 19 aware of any license by Universal Music to
12:56:45 20 The Singing Machine Company for the use of any master
12:56:49 21 recordings in this Karaoke machine?
12:57:07 22 A. I'm not.
12:57:09 23 But I'd like a better opportunity to
12:57:11 24 read this agreement to answer that question.
12:57:15 25 MS. LEWIS: And I'd also like to object that

WILLIAM WADDELL

12:57:17 1 the document speaks for itself.

12:57:20 2 MR. ISER: It's not speaking to me, Counsel.

12:57:21 3 That's why I'm asking the question.

12:57:29 4 Q. Was this one of the documents you

12:57:30 5 reviewed in preparation for today?

12:57:33 6 A. Yes, but --

12:57:34 7 Q. Why don't you take a moment and see

12:57:36 8 whether or not it sheds any light on the issue of the

12:57:42 9 license with the master recordings.

12:57:44 10 While you do that, let me ask you this

12:57:45 11 question:

12:57:45 12 Would it be correct that a license for

12:57:47 13 the use of the Motown trademark in connection with a

12:57:55 14 Karaoke machine, in your mind, would not include also

12:57:57 15 the right to use master recordings owned by

12:58:01 16 Universal Music Group?

12:58:05 17 A. It would not, normally.

12:58:06 18 Q. Okay.

12:58:07 19 A. You know, it's what's -- I mean, I

12:58:10 20 didn't draft the agreement.

12:58:11 21 What's a little unclear is what you

12:58:13 22 pointed out that says on Page 45, "Karaoke CDGs", you

12:58:24 23 know, which is interesting. I'm not sure what that

12:58:28 24 is.

12:58:33 25 But normally, if we license recordings,

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12:58:37 1 the recordings would be listed. They'd be identified.

12:58:42 2 These are the recordings we're

12:58:45 3 licensing. And I see no such list or identification

12:58:47 4 in this document.

12:58:48 5 So by virtue of the fact that it's not

12:58:51 6 there strikes me that we didn't license masters under

12:58:54 7 this document.

12:58:55 8 Q. Let me go at it a different way.

12:58:58 9 Are you familiar with the expression

12:59:00 10 "CD with graphics" as a form of license where a master

12:59:08 11 recording is also licensed with the graphics?

12:59:13 12 A. Yeah, we manufacture CDs. We call that

12:59:16 13 enhanced content.

12:59:17 14 Q. Yes.

12:59:18 15 A. Yes.

12:59:18 16 Q. If enhanced content --

12:59:22 17 Well, my first question is:

12:59:23 18 Do you recognize the expression CDG as

12:59:28 19 contained on Bates Number UMG 45 to refer to that,

12:59:42 20 Karaoke CDGs is referring to CDs with enhanced

12:59:47 21 content?

12:59:47 22 A. I don't.

12:59:47 23 Q. Do not?

12:59:49 24 A. I've never seen CDGs.

12:59:49 25 Q. Okay.

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12:59:51 1 A. You're telling me what you understand it
12:59:53 2 to mean --
12:59:53 3 Q. Okay.
12:59:53 4 A. -- which may very well be true. I just
12:59:55 5 don't have an opinion.
12:59:57 6 Q. Okay. So now let's take a look at
12:59:59 7 UMG 48, couple more pages into this document.
13:00:03 8 A. Yes.
13:00:03 9 Q. And for the record, UMG 48 is the first
13:00:07 10 page of the document that's entitled "Amendment
13:00:10 11 Number 1 To Master Merchandising License Agreement,"
13:00:13 12 dated February 3, 2003.
13:00:18 13 And I'd ask you, sir, first of all, have
13:00:24 14 you ever seen this document before?
13:00:25 15 A. I think I saw this document in
13:00:27 16 preparation.
13:00:27 17 Q. Okay. Take a look, now, if you would
13:00:29 18 under the amendment Paragraph 3 right at the bottom of
13:00:33 19 the first page.
13:00:34 20 A. Yeah.
13:00:34 21 Q. It says, "Licensed Article shall be
13:00:37 22 amended to include Karaoke DVD machines and Karaoke
13:00:44 23 DVD discs, but only Karaoke DVD discs that contain the
13:00:44 24 original sound recordings owned by licensor."
13:00:50 25 Do you see that?

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13:00:50 1 A. Yes.

13:00:51 2 Q. Do you have any idea what that means,

13:00:54 3 what a Karaoke DVD disc is?

13:00:57 4 MS. LEWIS: Objection. The document speaks

13:00:59 5 for itself.

13:01:01 6 THE WITNESS: Yes, my understanding in the

13:01:03 7 industry is that if it's a DVD, a digital video device

13:01:09 8 commonly used by people in their homes to display

13:01:15 9 video images and sound through their television, if

13:01:20 10 that's what you're asking.

13:01:21 11 BY MR. ISER:

13:01:21 12 Q. I'm asking does this document now as you

13:01:25 13 review it as the 30(b)(6) representative indicate to

13:01:30 14 you that in addition to licensing the Motown mark for

13:01:34 15 use on a Karaoke machine, that in fact Motown

13:01:38 16 additionally licensed certain of its master sound

13:01:43 17 recordings for use in the Karaoke machine?

13:01:48 18 A. I would think that would be likely,

13:01:50 19 correct.

13:01:50 20 Q. Okay. Would you expect that there would

13:01:53 21 be separate compensation paid for for the sound

13:01:57 22 recordings separate and apart from compensation paid

13:02:00 23 for use of the mark on the Karaoke machine?

13:02:03 24 A. I would expect that, yes.

13:02:04 25 Q. And would it be your expectation that

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13:02:14 1 separate and apart from this agreement, there would be
13:02:16 2 a separate agreement for the licensing of the master
13:02:19 3 sound recordings?

13:02:20 4 A. Yes.

13:02:20 5 Q. And this is so, notwithstanding the
13:02:27 6 amendment here that the license article includes both,
13:02:31 7 the use of the mark on the machine and Karaoke DVD
13:02:38 8 discs that contain the original sound recordings?

13:02:40 9 MS. LEWIS: Objection. The document speaks
13:02:42 10 for itself.

13:02:45 11 THE WITNESS: Well, once again, if we're going
13:02:48 12 to supply -- we do routinely, not in this context
13:02:52 13 necessarily, but manufacture discs for third parties
13:02:58 14 with music on the discs. I'm familiar with those
13:03:03 15 agreements.

13:03:04 16 And these agreements, here, that you've
13:03:05 17 marked as Exhibit 106 aren't consistent with the
13:03:08 18 format of those agreements.

13:03:10 19 So I would not suspect that the two
13:03:14 20 agreements, the original agreement and the amendment
13:03:16 21 marked as 106, pertain to that. That is, the
13:03:20 22 manufacturing of CDs or DVDs and delivery of those, or
13:03:23 23 the licensing of sound recordings.

13:03:23 24 BY MR. ISER:

13:03:26 25 Q. Do you have any explanation, then, why

WILLIAM WADDELL

13:03:28 1 in this amendment to Schedule A on Exhibit UMG 48 --

13:03:34 2 A. Yes?

13:03:35 3 Q. -- would include as licensed articles,
13:03:38 4 the defined term "licensed articles," to include both
13:03:42 5 the DVD machine, itself, as well as the DVD discs?

13:03:48 6 MS. LEWIS: Objection. Argumentative. May
13:03:51 7 have been asked and answered.

13:03:52 8 THE WITNESS: Well, I guess it comes down
13:03:54 9 to --

13:03:59 10 You know, if you look at the definition
13:04:01 11 of "licensed articles" on the first page of
13:04:03 12 Exhibit 106, it's talking about those articles that
13:04:09 13 display or use the licensed property.

13:04:15 14 So the licensed articles might seem to
13:04:17 15 indicate that it's an article that Universal Music
13:04:21 16 Group or UME is licensing, but it's not true that way.

13:04:26 17 We are issuing a license for the use of
13:04:29 18 these marks on articles, and that those articles are
13:04:34 19 licensed articles. That is, that the license and the
13:04:37 20 mark being licensed hereunder can be used on those
13:04:41 21 articles.

13:04:42 22 We're not licensing under this agreement
13:04:44 23 a Karaoke machine. We don't make Karaoke machines.
13:04:47 24 We don't have a Karaoke machine to license to anyone.
13:04:50 25 We don't own that.

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13:04:52 1 This company, The Singing Machine, is
13:04:55 2 the owner of the Karaoke machine.
13:04:55 3 BY MR. ISER:
13:04:59 4 Q. Understood.
13:04:59 5 A. And we're giving them the right to use
13:05:01 6 the Motown mark pursuant to this license on that
13:05:04 7 machine.
13:05:04 8 Q. Yes?
13:05:05 9 A. So that's a licensed article.
13:05:07 10 Q. Understood.
13:05:08 11 A. Okay.
13:05:10 12 Q. My question is:
13:05:11 13 Under this agreement, are you also
13:05:13 14 giving The Singing Machine Company the right to
13:05:15 15 incorporate in its Karaoke machine master recordings
13:05:22 16 owned by Universal Music Group?
13:05:23 17 MS. LEWIS: Objection. Vague and ambiguous.
13:05:25 18 Asked and answered. Argumentative.
13:05:28 19 THE WITNESS: But the answer is no.
13:05:29 20 BY MR. ISER:
13:05:29 21 Q. Okay. Can you tell me looking at this
13:05:31 22 whether the consideration paid to Universal for the
13:05:38 23 right to put the Motown mark on the Karaoke machine is
13:05:44 24 inclusive of the right to utilize certain master
13:05:49 25 recordings in the Karaoke machine, itself?

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13:05:53 1 MS. LEWIS: Same objection. Vague and
13:05:54 2 ambiguous. Asked and answered. Argumentative.
13:05:58 3 THE WITNESS: My best response would be no.
13:05:59 4 BY MR. ISER:
13:05:59 5 Q. Okay. Do you know for sure?
13:06:03 6 A. Well, no, I don't.
13:06:05 7 Q. Okay. Now, I also included in this
13:06:12 8 packet, and I can see it's a mistake, the last
13:06:15 9 document as part of 106 is a document entitled
13:06:23 10 "Agreement Hasbro Hit Clips (Motown)" --
13:06:26 11 MS. LEWIS: Actually, that isn't part of my
13:06:29 12 106.
13:06:30 13 MR. ISER: Really? Good. Okay. Good. Then
13:06:32 14 I didn't make a mistake after all. All right.
13:06:35 15 Perfect.
13:06:39 16 So strike that last comment by me,
13:06:41 17 because I am mistaken.
13:06:43 18 All right.
13:07:05 19 MS. LEWIS: I think that's what Exhibit 107 is
13:07:10 20 going to be.
13:07:10 21 MR. ISER: Exhibit 107, please.
13:07:28 22 (Whereupon Exhibit 107 was marked for
13:07:29 23 identification)
13:07:29 24 MR. ISER: Oh, before I actually --
13:07:31 25 We're good?

WILLIAM WADDELL

13:07:33 1 I see it. Thank you.

13:07:35 2 Back to 106 for a moment before we get

13:07:37 3 to 107.

13:07:39 4 Q. Do you know, sir, whether this agreement

13:07:44 5 with The Singing Machine Company, Inc., is still in

13:07:49 6 effect?

13:07:51 7 A. Independent of whatever the agreement

13:07:53 8 says?

13:07:53 9 No, I don't.

13:07:54 10 Q. All right. Does the agreement tell us

13:07:56 11 whether it's in effect or not?

13:07:57 12 It says on Page Bates 45 that the

13:08:02 13 license term expired on 3-31-2006.

13:08:10 14 A. I see that.

13:08:10 15 Q. All right. Do you have any knowledge,

13:08:13 16 sir, whether there's been an extension, or is the only

13:08:17 17 information you have that this agreement expired in

13:08:20 18 2006?

13:08:30 19 A. I believe this is all I know, so I have

13:08:35 20 no reason to think that it did anything other than

13:08:37 21 expire in 2006.

13:08:38 22 Q. Okay. In other words, as you sit here

13:08:41 23 today, you're not aware that there's somebody out

13:08:44 24 there selling Motown-branded Karaoke machines.

13:08:47 25 True?

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13:08:49 1 A. That's true.

13:08:49 2 MR. ISER: Okay. Now, let's move on to

13:08:52 3 Exhibit 107.

13:08:57 4 Exhibit 107, for the record, is a

13:09:10 5 document entitled "Agreement Hasbro Hit Clips

13:09:16 6 (Motown)," and it bears Bates Numbers 135 through 140,

13:09:20 7 UMG 135 through UMG 140.

13:09:25 8 Q. Sir, have you seen this document before?

13:09:27 9 A. Yes, I have.

13:09:27 10 Q. Did you see it prior to preparing for

13:09:29 11 this deposition?

13:09:30 12 A. No.

13:09:30 13 Q. Were you aware of a product entitled

13:09:36 14 "Hasbro Hit Clips" prior to preparing for your

13:09:39 15 deposition?

13:09:39 16 A. No.

13:09:39 17 Q. Have you ever seen anywhere a product

13:09:43 18 known as Hasbro Hit Clips?

13:09:46 19 A. No.

13:09:46 20 Q. Do you know what they are?

13:09:52 21 A. Not really.

13:09:52 22 Q. Okay. It says here in Paragraph 1 that

13:10:01 23 there's a license being granted on a nonexclusive

13:10:04 24 basis for the manufacture, distribution and sale of

13:10:06 25 miniature phonorecord devices in the configuration

WILLIAM WADDELL

13:10:10 1 tentatively entitled "Hasbro Hit Clips".
13:10:13 2 Do you see that?
13:10:13 3 A. Yes.
13:10:14 4 I knew that.
13:10:14 5 But, I mean, I think you were asking me
13:10:17 6 have I like held one, looked at one, seen one?
13:10:20 7 Q. Do you know if one even exists?
13:10:23 8 A. I don't know. I've never held, seen
13:10:25 9 one.
13:10:25 10 Q. So I'm just wondering whether you have
13:10:27 11 any information as to whether or not this product ever
13:10:30 12 was sold to the public.
13:10:30 13 A. I don't have knowledge --
13:10:32 14 Well, I guess I do have knowledge.
13:10:34 15 Because I think I looked at, once again, some checks.
13:10:38 16 And I believe that in addition to the
13:10:43 17 payment set fourth on Page 2 of the first page of 107,
13:10:46 18 that there was subsequent payments made to the
13:10:48 19 Universal Music Group by this licensee which would
13:10:54 20 leave one to believe that they actually sold product
13:10:58 21 and therefore paid us additional royalties beyond the
13:10:59 22 initial advance.
13:11:01 23 Q. Okay. You're referring to Schedule A
13:11:04 24 commencing on Page UMG 139?
13:11:15 25 A. Well, Schedule A on 139 is for the

WILLIAM WADDELL

13:11:18 1 initial payment.

13:11:18 2 Q. Okay. And on 140, it has the letter

13:11:23 3 where the initial advance payment is made with respect

13:11:26 4 to all three songs.

13:11:27 5 Correct?

13:11:27 6 A. Right.

13:11:27 7 I saw a spreadsheet, once again, I

13:11:31 8 think -- although, it may not have been -- like an

13:11:34 9 Excel document that shows some subsequent payments.

13:11:36 10 Q. Okay. Can you tell me the total amount

13:11:38 11 of subsequent payments beyond the advance that is set

13:11:43 12 forth?

13:11:43 13 A. I can make an estimate of somewhere in

13:11:45 14 the vicinity of 4- to \$500.

13:11:48 15 Q. Total over and above the advance?

13:11:50 16 A. That's my understanding.

13:11:51 17 MR. ISER: Okay. I'm informed that we need to

13:11:53 18 pause a moment so that the videographer can change his

13:11:56 19 tape.

13:11:56 20 So let's go off the record for one

13:11:58 21 moment.

13:11:58 22 THE VIDEOGRAPHER: This marks the end of tape

13:12:00 23 Number 1 in the deposition of Bill Waddell.

13:12:05 24 Going off the record.

13:12:06 25 The time is 13:12 hours.

WILLIAM WADDELL

13:12:12 1 (Whereupon a recess was taken)

13:16:49 2 THE VIDEOGRAPHER: Back on the record.

13:16:50 3 Here marks the beginning of tape

13:16:52 4 Number 2 in the deposition of Bill Waddell.

13:16:54 5 The time is 13:16 hours.

13:16:57 6 BY MR. ISER:

13:16:57 7 Q. Okay. Now, we're still taking a look

13:16:59 8 at the Hasbro Hit Clips agreement, Exhibit 107.

13:17:04 9 And just to make sure that I understand

13:17:06 10 what happened here, is by this document, your company

13:17:09 11 licensed to Hasbro clips of up to two minutes for each

13:17:15 12 of the songs "I Want You Back" by the Jackson 5;

13:17:19 13 "My Girl" by "The Temptations"; and "Stop In The Name

13:17:22 14 Of Love" by The Supremes".

13:17:26 15 Am I reading this correctly?

13:17:28 16 A. That's correct.

13:17:28 17 Q. All right. And just so I'm clear, there

13:17:35 18 is a advance set forth with respect to each of these

13:17:38 19 sound recordings in the amount of \$3,600, and in

13:17:44 20 addition, on top of the \$3,600 per song, you believe

13:17:51 21 Universal realized an additional 4- to \$500 for all

13:17:55 22 three.

13:17:55 23 Correct?

13:17:55 24 A. That's correct.

13:17:56 25 Q. Do you know whether or not this

WILLIAM WADDELL

13:17:59 1 agreement is still in effect?

13:18:02 2 A. I do not.

13:18:02 3 Q. Do you know whether or not Hasbro is

13:18:06 4 still selling the product tentatively entitled

13:18:10 5 "Hasbro Hit Clips"?

13:18:12 6 A. I do not.

13:18:12 7 Q. What is the last time that your company

13:18:22 8 received any money with respect to this license?

13:18:27 9 A. I'd have to look at that invoice

13:18:28 10 again -- or not that invoice, but that spreadsheet or

13:18:32 11 piece of paper I saw that set forth that there was

13:18:34 12 some further monies paid.

13:18:36 13 Q. All right. And, again, you received

13:18:37 14 that spreadsheet from Mr. Herskovitz?

13:18:40 15 A. I believe I did, yes.

13:18:41 16 Q. He's still in your office?

13:18:44 17 A. Yes.

13:18:45 18 MR. ISER: Okay. Once again, Counsel, this is

13:18:46 19 a document that I believe should be turned over to us.

13:18:52 20 It's responsive to our prior document request.

13:18:52 21 MS. LEWIS: And I would respond that I would

13:18:54 22 need to investigate, and it's potentially work

13:18:57 23 product.

13:18:58 24 MR. ISER: Okay.

13:20:32 25 Q. Mr. Waddell, do you know whether or not

WILLIAM WADDELL

13:20:35 1 there are any toy vehicles that have been licensed by
13:20:40 2 Universal Music Group for the Motown mark?

13:20:49 3 A. Well, I don't know what the products are
13:20:51 4 that are in the store at the Detroit Airport, so I
13:21:00 5 don't know that there has been or has not been.

13:21:03 6 Q. Okay. Have you ever seen any toy
13:21:07 7 vehicle that was a product licensed by your company
13:21:17 8 for the use of the Motown mark in connection with that
13:21:21 9 vehicle?

13:21:24 10 A. No.

13:21:29 11 MR. ISER: All right. Let me mark that as the
13:21:54 12 next exhibit.

13:21:55 13 (Whereupon Exhibit 108 was marked for
13:22:08 14 identification)

13:22:08 15 MR. ISER: Is this 108?

13:22:11 16 THE REPORTER: Yes.

13:22:12 17 MR. ISER: Did I give you one?

13:22:13 18 MS. LEWIS: Yes.

13:22:14 19 MR. ISER: Okay. Exhibit 108 is a letter
13:22:16 20 dated February 25, 2005.

13:22:21 21 Q. And, Mr. Waddell, have you ever seen
13:22:26 22 this letter before?

13:22:29 23 A. I think so.

13:22:33 24 Q. What is the basis or --

13:22:35 25 Could you explain what you mean by "I

WILLIAM WADDELL

13:22:37 1 think so"?

13:22:37 2 A. I think that this was also provided

13:22:40 3 me -- provided to me in preparation for this

13:22:42 4 deposition.

13:22:43 5 Q. Okay. Did you read this document before

13:22:45 6 this very moment?

13:22:47 7 A. I glanced at it.

13:22:49 8 MS. LEWIS: Objection as vague and ambiguous

13:22:51 9 as to "this very moment".

13:22:51 10 BY MR. ISER:

13:22:54 11 Q. Do you have a recollection of actually

13:22:56 12 seeing this before today?

13:23:09 13 A. Yeah, I believe I did see this before.

13:23:11 14 Q. Okay. Do you have any information

13:23:13 15 concerning this document other than what's set forth

13:23:17 16 in the letter?

13:23:18 17 A. No.

13:23:18 18 Q. Are you familiar with the use by Beasley

13:23:23 19 Broadcast Group, Inc. of a mark "Motown Soul Great

13:23:27 20 Rock And Roll"?

13:23:29 21 A. Other than what's set forth in this

13:23:31 22 letter, no.

13:23:32 23 Q. Okay. Do you know whether or not this

13:23:36 24 letter was actually sent to Beasley Broadcast

13:23:42 25 Group, Inc., the addressee on this letter?

WILLIAM WADDELL

13:23:44 1 A. I do not know that.

13:23:45 2 Q. Do you know whether or not

13:23:48 3 Beasley Broadcast Group, Inc. took any action in

13:23:52 4 response to this letter?

13:23:53 5 A. I do not know.

13:23:53 6 Q. Did you ever see any document or other

13:24:00 7 evidence that Beasley Broadcast Group, Inc. was

13:24:06 8 utilizing a mark as follows: "Motown Soul Great Rock

13:24:13 9 And Roll" under the state laws of North Carolina?

13:24:16 10 A. Other than what's set forth here in this

13:24:18 11 document, no.

13:24:18 12 Q. Do you have any understanding of what

13:24:29 13 goods or services the addressee, Beasley Broadcast

13:24:33 14 Group, Inc., was using this mark "Motown Soul Great

13:24:39 15 Rock And Roll" with?

13:24:45 16 A. No.

13:24:57 17 MR. ISER: Let me show you the next exhibit.

13:25:06 18 (Whereupon Exhibit 109 was marked for

13:25:07 19 identification)

13:25:07 20 MR. ISER: What exhibit is this?

13:25:19 21 THE REPORTER: 109.

13:25:22 22 MR. ISER: Exhibit 109 is a multi-page

13:25:24 23 document bearing Bates Number UMG 171 through 185.

13:25:35 24 Q. Mr. Waddell, have you ever seen this

13:25:37 25 document before?

WILLIAM WADDELL

13:25:38 1 A. Yes.

13:25:38 2 Q. Okay. Did you see it prior to your
13:25:41 3 preparation for this deposition?

13:25:43 4 A. No.

13:25:43 5 Q. Prior to your deposition, were you aware
13:25:49 6 of an opposition proceeding filed in Hong Kong with
13:26:00 7 respect to the use of a mark which was a graphic M by
13:26:07 8 Miller's Oil Limited?

13:26:09 9 MS. LEWIS: Prior to his deposition, or his
13:26:11 10 preparation for his deposition?

13:26:12 11 MR. ISER: Prior to his preparation for his
13:26:15 12 deposition.

13:26:16 13 THE WITNESS: No.

13:26:16 14 BY MR. ISER:

13:26:16 15 Q. Okay. Did you have anything to do with
13:26:23 16 the preparation of this document, Exhibit 109?

13:26:26 17 A. No.

13:26:26 18 Q. I refer you now to Bates number UMG 179.

13:26:39 19 A. Yes?

13:26:39 20 Q. Specifically, Paragraph 10 where it says
13:26:45 21 that the applicant -- and I will represent to you that
13:26:51 22 this is Miller's Oil Limited -- is applying for
13:26:55 23 registration of the trademark, and then it has a
13:26:57 24 graphic M under an application number in Classes 1, 3
13:27:01 25 and 4 in respect of -- respectively, quote, "chemicals

WILLIAM WADDELL

13:27:07 1 used in the industry, fuel additives, transmission
13:27:10 2 fluids, hydraulic fluids," et cetera.

13:27:14 3 Do you see that?

13:27:15 4 A. What page are you on, sir?

13:27:16 5 Q. I'm sorry. UMG 179, Paragraph 10.

13:27:22 6 MS. LEWIS: Um --

13:27:29 7 MR. ISER: Well, that's weird.

13:27:34 8 MS. LEWIS: Oh.

13:27:35 9 MR. ISER: Since I didn't do the Bates

13:27:38 10 numbering, I don't know.

13:27:38 11 MS. LEWIS: I might have an explanation for

13:27:38 12 this.

13:27:39 13 I believe when we first produced these,

13:27:41 14 there was a slight Bates numbering -- we errored and

13:27:45 15 we reproduced correctly numbered versions.

13:27:49 16 So I suspect your exhibits are partially

13:27:53 17 from that initial production and partially from our

13:27:57 18 corrected production.

13:27:58 19 MR. ISER: Nice.

13:27:59 20 Okay. So I'll tell you what --

13:28:00 21 Q. What Bates numbers do you have on the

13:28:02 22 bottom of yours, sir?

13:28:05 23 Where does yours start, 171 or 176?

13:28:06 24 A. 176.

13:28:07 25 Q. Okay. So I'm going to change mine --

WILLIAM WADDELL

13:28:08 1 out of time, I'm going to change my description of
13:28:11 2 this document as Exhibit 109 as bearing Bates
13:28:15 3 Numbers 176 through 190.

13:28:21 4 And I will ask you, sir, to refer to the
13:28:27 5 Bates Number UMG 184 and to Paragraph 10.

13:28:36 6 A. Which is what you had read parts of
13:28:38 7 earlier.

13:28:39 8 Q. Yes.

13:28:39 9 A. Yes.

13:28:39 10 Q. Indicating that the applicant was
13:28:41 11 applying to use the trademark graphic M with respect
13:28:45 12 to chemicals used in the industry, fuel additives,
13:28:48 13 transmission fluids.

13:28:49 14 Do you see that now?

13:28:51 15 A. I do.

13:28:51 16 Q. Okay. You recognize that the trademark
13:28:55 17 M looks similar to Motown's mark.

13:28:58 18 Correct?

13:28:59 19 MS. LEWIS: Objection. Calls for speculation.

13:29:01 20 BY MR. ISER:

13:29:01 21 Q. You'd agree with me?

13:29:02 22 A. I would agree with you.

13:29:03 23 Q. Okay. It also indicates that they're
13:29:07 24 using it in classes of goods with respect to chemicals
13:29:09 25 and fuel additives and transmission fluids.

WILLIAM WADDELL

13:29:12 1 Do you see that?

13:29:13 2 A. Yes.

13:29:13 3 Q. To your knowledge, sir, does

13:29:15 4 Universal Music Group utilize the Motown marks -- its

13:29:20 5 Motown marks in connection with chemicals, fuel

13:29:22 6 additives, transmission fluids and the like?

13:29:27 7 A. I have no knowledge of us licensing a

13:29:29 8 mark for those uses, no.

13:29:31 9 Q. What about utilizing the mark on your

13:29:33 10 own with respect to those uses?

13:29:42 11 A. I have no knowledge of us doing that.

13:29:43 12 Q. Right.

13:29:44 13 You would understand that the use of the

13:29:45 14 Motown marks by your company relates to entertainment

13:29:49 15 services?

13:29:49 16 MS. LEWIS: Objection.

13:29:49 17 BY MR. ISER:

13:29:51 18 Q. Records, live performances relating to

13:29:55 19 Motown Records.

13:29:56 20 True?

13:29:56 21 MS. LEWIS: Objection. Calls for speculation.

13:30:02 22 THE WITNESS: Among other uses.

13:30:03 23 BY MR. ISER:

13:30:03 24 Q. Okay. But mostly, you would agree with

13:30:06 25 me that the use of the Motown marks by your company

WILLIAM WADDELL

13:30:09 1 relate to, broadly speaking, entertainment services
13:30:13 2 and goods.
13:30:14 3 True?
13:30:14 4 MS. LEWIS: Objection. Argumentative.
13:30:17 5 THE WITNESS: I don't know. I'm not -- you
13:30:18 6 know, you're -- I can't answer your question. I
13:30:24 7 really don't --
13:30:25 8 Entertainment services and --
13:30:25 9 BY MR. ISER:
13:30:27 10 Q. Goods?
13:30:28 11 A. Goods?
13:30:28 12 Q. Yes.
13:30:30 13 Relating to Motown Records.
13:30:32 14 MS. LEWIS: Same objection.
13:30:33 15 THE WITNESS: Well, Motown Records --
13:30:35 16 MS. LEWIS: Vague and ambiguous.
13:30:36 17 THE WITNESS: I don't know how to answer you.
13:30:36 18 BY MR. ISER:
13:30:36 19 Q. Okay.
13:30:38 20 A. Entertainment goods, what are those?
13:30:43 21 Q. You don't being what I'm talking about?
13:30:46 22 MS. LEWIS: Objection. Argumentative.
13:30:47 23 BY MR. ISER:
13:30:47 24 Q. Records, CDs --
13:30:49 25 A. I can speculate in casual conversation,

WILLIAM WADDELL

13:30:51 1 but this is not a casual conversation so I'm trying to
13:30:54 2 be more accurate in my responses to give you the
13:30:57 3 information you want.

13:30:58 4 Q. Okay. Is it your --

13:31:03 5 Would you agree with me since you're the
13:31:06 6 30(b)(6) designee that this appears to be an effort by
13:31:13 7 your company to stop the applicant, Miller's Oil
13:31:17 8 Limited, from using a graphic M that looks very
13:31:22 9 similar to Motown's graphic M with respect to
13:31:27 10 chemicals and fuel additives and transmission fluids?

13:31:29 11 MS. LEWIS: Objection. The document speaks
13:31:32 12 for itself.

13:31:32 13 THE WITNESS: I would agree with you, yeah.

13:31:33 14 BY MR. ISER:

13:31:34 15 Q. And you would agree with me that your
13:31:35 16 company is not engaged in the business of either
13:31:38 17 selling or licensing its mark for use with chemicals
13:31:42 18 and fuel additives and transmission fluids.

13:31:45 19 Correct?

13:31:47 20 A. As far as I know -- I'm aware, that's
13:31:49 21 correct.

13:31:49 22 Q. Now, are you aware, sir, of what
13:31:51 23 happened with respect to this opposition proceeding?

13:31:53 24 A. I am not.

13:31:53 25 Q. Do you know whether or not the

WILLIAM WADDELL

13:31:54 1 opposition proceeding went all the way to a hearing?

13:31:56 2 A. I do not.

13:31:57 3 Q. Do you know whether there was any

13:31:59 4 resolution of it?

13:31:59 5 A. I don't know.

13:32:00 6 Q. Do you know whether there was a

13:32:02 7 settlement with Miller's Oil Limited?

13:32:05 8 A. I have no knowledge of it.

13:32:06 9 Q. Do you know whether Miller's Oil Limited

13:32:08 10 was required not to use this graphic M in connection

13:32:12 11 with chemicals and fuel additives and transmission

13:32:15 12 fluids?

13:32:16 13 A. I don't know that.

13:32:17 14 Q. The sum total of what you know is what's

13:32:24 15 contained in this document.

13:32:26 16 Correct?

13:32:26 17 A. On this topic, yes.

13:32:27 18 Q. And you don't know the current status of

13:32:30 19 this opposition?

13:32:32 20 A. I don't.

13:32:32 21 Q. And if you wanted to find out the

13:32:37 22 current status, what would you do?

13:32:43 23 A. Well, I'd probably ask either Joanne

13:32:50 24 or --

13:32:55 25 I don't think I have access to these

WILLIAM WADDELL

13:32:57 1 types of files.

13:32:58 2 This is in Hong Kong.

13:33:00 3 Right?

13:33:00 4 Q. I don't -- it looks like that to me.

13:33:03 5 You have more knowledge about this than

13:33:04 6 I do, believe it or not.

13:33:05 7 A. I guess I'd try to find somebody in

13:33:08 8 Hong Kong. I'm not sure what I'd do.

13:33:11 9 Q. Do you have any information as you sit

13:33:23 10 here today whether or not the applicant, Miller's Oil

13:33:26 11 Limited, utilizes this graphic M in connection with

13:33:29 12 this product?

13:33:30 13 A. I have no knowledge of that.

13:33:48 14 MR. ISER: Would you mark this as the next

13:33:50 15 exhibit, please.

13:33:50 16 (Whereupon Exhibit 110 was marked for

13:33:51 17 identification)

13:33:51 18 BY MR. ISER:

13:34:20 19 Q. Exhibit 110 is a letter dated October 3,

13:34:28 20 2005, bearing Bates Numbers UMG 168 through UMG 170.

13:34:34 21 MS. LEWIS: I think we might be having the

13:34:36 22 same problem.

13:34:41 23 MR. ISER: All right. It's bearing Bates

13:34:44 24 Numbers UMG 173 through 175.

13:34:53 25 Q. Have you seen this document before

WILLIAM WADDELL

13:34:55 1 today, sir?

13:34:56 2 A. Yes.

13:34:56 3 Q. Was it provided to you in order to
13:34:58 4 prepare for your deposition?

13:35:00 5 A. Yes.

13:35:00 6 Q. Had you seen it before it was provided
13:35:02 7 to you for purposes of preparing for your deposition?

13:35:05 8 A. Yes.

13:35:05 9 Q. Okay. Under what circumstances did you
13:35:13 10 see this previous to preparing for your deposition?

13:35:19 11 A. Well, I was one of the people consulted
13:35:25 12 in drafting this.

13:35:29 13 MS. LEWIS: And I'd caution you that to the
13:35:33 14 extent this is getting into attorney-client
13:35:36 15 communications and work product, you should not
13:35:38 16 answer.

13:35:38 17 MR. ISER: All I asked him is how he has
13:35:41 18 familiarity with this.

13:35:42 19 MS. LEWIS: Yeah, I'm flighting the issue.

13:35:42 20 BY MR. ISER:

13:35:48 21 Q. Did you -- did you draft this letter,
13:35:51 22 sir?

13:35:51 23 A. I did not.

13:35:51 24 Q. Did you participate in the drafting?

13:35:57 25 A. I believe I did in the sense that I may

WILLIAM WADDELL

13:35:59 1 have made comments to an earlier draft.

13:36:02 2 Q. Okay. Do you know who DeAnne Ozaki is?

13:36:06 3 A. I do.

13:36:06 4 Q. Who is that?

13:36:07 5 A. She is an employee of the

13:36:09 6 Universal Music Group who handles matters involving

13:36:17 7 trademark in the sense of registering, I believe.

13:36:21 8 Q. Okay. Did you review this letter before

13:36:27 9 it was sent out?

13:36:28 10 A. Yes.

13:36:28 11 Q. Did you approve this letter to be sent

13:36:31 12 out?

13:36:33 13 A. Not my final decision, but this letter

13:36:35 14 was okay with me, yes.

13:36:36 15 Q. Okay. Did it go --

13:36:39 16 After you reviewed it, did it go to

13:36:41 17 someone else for review and approval?

13:36:43 18 A. I don't know that it went stepwise that

13:36:46 19 way. But, yes, other people reviewed this prior to it

13:36:49 20 being sent out, people in addition to myself and

13:36:50 21 DeAnne.

13:36:50 22 Q. So you agreed with all of the content

13:36:53 23 before it was sent out?

13:36:55 24 A. Yes.

13:36:55 25 Q. Okay. You see --

WILLIAM WADDELL

13:37:07 1 First of all, let me make sure I
13:37:09 2 understand that this was a Cease and Desist letter
13:37:12 3 dispatched by your company to Mr. Greg Vines of
13:37:16 4 SOFA Home Entertainment, LLC with respect to a DVD
13:37:21 5 featuring musical performances that were recorded on
13:37:23 6 The Ed Sullivan Show, and that the DVD was entitled
13:37:28 7 "Motown Gold On The Ed Sullivan Show."

13:37:35 8 Correct?

13:37:36 9 A. Yes, that's correct.

13:37:37 10 Q. And by this letter, Universal was
13:37:44 11 complaining about the use of the mark Motown on this
13:37:47 12 product.

13:37:47 13 Correct?

13:37:48 14 MS. LEWIS: Objection. The document speaks
13:37:50 15 for itself.

13:37:53 16 THE WITNESS: But yes.

13:37:53 17 BY MR. ISER:

13:37:54 18 Q. Okay. And in response to this letter,
13:37:58 19 what happened?

13:38:00 20 A. The DVD --

13:38:02 21 MS. LEWIS: And also, to the extent that your
13:38:05 22 knowledge of what happened is an attorney-client
13:38:10 23 communication, I'd instruct you not to answer.

13:38:15 24 THE WITNESS: It's not.

13:38:15 25 The DVD reference, the "Motown Gold On

WILLIAM WADDELL

13:38:19 1 The Ed Sullivan Show", was never released.

13:38:22 2 BY MR. ISER:

13:38:22 3 Q. Okay. And is that because of this

13:38:24 4 letter?

13:38:24 5 A. Yes.

13:38:24 6 Q. Okay. In the middle of the second page

13:38:32 7 of this letter, which is UMG 174, there's a discussion

13:38:39 8 of SOFA's claim that its use of the mark was a, quote,

13:38:46 9 nominative fair use.

13:38:47 10 Do you see that?

13:38:56 11 A. Yeah.

13:38:56 12 Q. Okay. And it sites The New Kids On The

13:39:05 13 Block case from the 9th Circuit regarding the factors

13:39:08 14 to determine nominative fair use.

13:39:14 15 Correct?

13:39:15 16 A. The document refers to that case.

13:39:16 17 Correct.

13:39:17 18 Q. All right. In the middle of the

13:39:18 19 paragraph, there's a sentence that begins, "If SOFA

13:39:27 20 wants to identify the genera of music," do you see

13:39:30 21 that?

13:39:38 22 A. Yes.

13:39:38 23 Q. Okay. The full sentence says: If SOFA

13:39:42 24 wants to identify the genera of music, it can use

13:39:45 25 terms such as "'60's," "music from the Motor City,"

WILLIAM WADDELL

13:39:48 1 and/or "soul".

13:39:49 2 Do you see that?

13:39:50 3 A. Yes.

13:39:50 4 Q. Do you still agree with that sentence?

13:39:54 5 MS. LEWIS: Objection. Assumes facts not in

13:39:55 6 evidence.

13:39:59 7 THE WITNESS: Well, you asked me if I agreed

13:40:00 8 with what was in the document earlier. So you're

13:40:03 9 getting now to a point --

13:40:04 10 I actually don't have an opinion about

13:40:06 11 this sort of legal argument about what these cases say

13:40:09 12 and mean that -- I did not review this document for

13:40:16 13 that purpose.

13:40:16 14 BY MR. ISER:

13:40:17 15 Q. I'm not actually asking about the case

13:40:20 16 New Kids On The Block.

13:40:21 17 I'm asking about the sentence that was

13:40:23 18 written by Ms. Ozaki and reviewed and approved by

13:40:30 19 you --

13:40:30 20 A. Right.

13:40:30 21 Q. -- where if SOFA wants to identify the

13:40:34 22 genera of music, it can use terms such as "60's,"

13:40:37 23 "music from the Motor City," and/or "soul".

13:40:39 24 And my question is:

13:40:41 25 Do you still agree with that sentence,

WILLIAM WADDELL

13:40:43 1 sir?

13:40:43 2 MS. LEWIS: Same objection.

13:40:44 3 THE WITNESS: Yeah, I mean, SOFA can use

13:40:46 4 those, terms and we would have no objection.

13:42:01 5 MR. ISER: Okay. Would you mark this as the

13:42:03 6 next exhibit, please.

13:42:03 7 (Whereupon Exhibit 111 was marked for

13:42:19 8 identification)

13:42:19 9 MS. LEWIS: Can I have a copy?

13:42:20 10 MR. ISER: Yeah.

13:42:21 11 MS. LEWIS: Thanks.

13:42:21 12 BY MR. ISER:

13:42:25 13 Q. Okay. 111, Exhibit 111, is a multi-page

13:42:36 14 document bearing Bates Numbers 197 through 200.

13:42:48 15 Have you seen this document before?

13:42:50 16 A. Yes.

13:42:50 17 Q. Did you review this document before it

13:42:55 18 was sent out?

13:42:58 19 A. No.

13:42:58 20 Q. No?

13:43:04 21 A. No.

13:43:04 22 Q. Were you aware at the time it was sent

13:43:06 23 out that Universal Music Group had opposed a trademark

13:43:17 24 for a retail motorcycle store that used the mark

13:43:24 25 Motown in its name as in Motown-Harley Davidson, Inc.?

WILLIAM WADDELL

13:43:31 1 Were you aware of that at the time it
13:43:33 2 occurred?
13:43:34 3 A. No.
13:43:34 4 Q. As of February 20, 2008 --
13:43:47 5 Well, strike that.
13:43:48 6 Have you reviewed this document in
13:43:49 7 preparation for this deposition?
13:43:50 8 A. Yes.
13:43:51 9 Q. Was it provided to you by counsel?
13:43:58 10 A. By which counsel?
13:43:59 11 Q. By either of your counsel in order for
13:44:01 12 you to prepare for this deposition.
13:44:03 13 A. Yes, it was.
13:44:04 14 Q. Okay. Had you seen it before you
13:44:06 15 prepared for your deposition?
13:44:07 16 A. No.
13:44:07 17 Q. Had you any awareness, whatsoever, of
13:44:09 18 this opposition proceeding?
13:44:11 19 A. Prior?
13:44:12 20 Q. Prior to the preparation for your
13:44:13 21 deposition.
13:44:13 22 A. I had no awareness.
13:44:15 23 Q. Okay. As of February 20, 2008, to your
13:44:19 24 knowledge, sir, is your company engaged in the sale of
13:44:26 25 new and used motorcycles or motorcycle parts?

WILLIAM WADDELL

13:44:31 1 A. No, to my knowledge, no.

13:44:32 2 Q. Do you know the status of this

13:44:34 3 opposition proceeding?

13:44:36 4 A. I do not.

13:44:36 5 Q. Do you know if Motown-Harley

13:44:40 6 Davidson, Inc., the applicant, has taken any action in

13:44:43 7 response to the opposition filed by your company?

13:44:47 8 A. No.

13:44:47 9 Q. If you turn to page UMG 199, I'll refer

13:45:36 10 you to Paragraph 5.

13:45:40 11 Do you have that in front of you?

13:45:41 12 A. I do.

13:45:42 13 Q. The second sentence says: Applicant's

13:45:47 14 mark and opposer's mark are virtually identical."

13:45:53 15 And stopping right there, just let me

13:45:56 16 refer you back to the first page of Exhibit 111.

13:46:01 17 It refers to a service mark owned by

13:46:03 18 your company, Motown USA & Design.

13:46:06 19 Do you see that?

13:46:06 20 A. Yes.

13:46:06 21 Q. And you see that the applicant's mark is

13:46:10 22 Motown-Harley Davidson, Inc.?

13:46:12 23 Do you see that?

13:46:16 24 A. Applicant is Motown-Harley

13:46:18 25 Davidson, Inc.?

WILLIAM WADDELL

13:46:19 1 Q. Yes.

13:46:19 2 A. Yes, I see that.

13:46:20 3 Q. Okay. Do you understand that by this

13:46:22 4 document, your company is objecting to the mark

13:46:26 5 Motown-Harley Davidson, Inc.?

13:46:30 6 Do you see that?

13:46:35 7 A. I -- I'm not sure that that's accurate.

13:46:41 8 But okay.

13:46:41 9 Q. Okay. You understand that your company

13:46:44 10 is objecting to the use of Motown as part of the

13:46:49 11 applicant's name?

13:46:52 12 Do you agree with me on that?

13:47:20 13 A. Well, I'm trying to find the words in

13:47:23 14 here where it says what the mark is.

13:47:25 15 But maybe you can point me to it.

13:47:27 16 Q. It's illusive.

13:47:29 17 A. Okay.

13:47:33 18 Q. Do you know which mark your company is

13:47:36 19 objecting to?

13:47:39 20 A. Other than what's written in the

13:47:40 21 document, I have no knowledge of this at all.

13:47:42 22 Q. Okay.

13:47:44 23 A. So --

13:47:45 24 Q. Going back to Paragraph 5 on Page

13:47:50 25 UMG 199 --

WILLIAM WADDELL

13:47:51 1 A. Yes?

13:47:52 2 Q. -- do you agree that the term "USA" is

13:48:03 3 descriptive, geographically descriptive?

13:48:06 4 MS. LEWIS: Objection. Calls for a legal

13:48:08 5 conclusion.

13:48:08 6 And also, the document speaks for

13:48:11 7 itself.

13:48:11 8 BY MR. ISER:

13:48:18 9 Q. Do you believe the term "USA" is

13:48:20 10 geographically descriptive?

13:48:22 11 MS. LEWIS: Same objection.

13:48:24 12 And to the extent he's an attorney, I

13:48:25 13 would also instruct him not to answer that.

13:48:29 14 MR. ISER: There's an instruction on this one?

13:48:32 15 MS. LEWIS: Yes.

13:48:33 16 MR. ISER: Okay.

13:48:36 17 Is there somebody that you can

13:48:38 18 designated, Counsel, with respect to what UMG meant

13:48:40 19 when it wrote "geographically descriptive"?

13:48:44 20 MS. LEWIS: The document speaks for itself.

13:48:45 21 MR. ISER: Well, it doesn't.

13:48:47 22 I want to know from the witness what was

13:48:49 23 meant by your company when it wrote here that the term

13:48:53 24 "USA" was geographically descriptive.

13:48:55 25 MS. LEWIS: And I think that the document

WILLIAM WADDELL

13:48:57 1 speaks for itself.

13:48:57 2 MR. ISER: So you are instructing the witness

13:48:59 3 not to answer.

13:49:00 4 Correct?

13:49:00 5 MS. LEWIS: Yes.

13:49:01 6 MR. ISER: Okay.

13:49:01 7 BY MR. ISER:

13:49:01 8 Q. It says here that some of these services

13:49:04 9 offered by the Harley Davidson dealer are related to

13:49:12 10 the services offered by your company.

13:49:16 11 Can you tell me what services offered by

13:49:17 12 the Harley Davidson dealership are related to the

13:49:24 13 services offered by your company?

13:49:27 14 MS. LEWIS: Same objection. The document

13:49:30 15 speaks for itself.

13:49:32 16 MR. ISER: Are you instructing him, or can he

13:49:34 17 answer that?

13:49:35 18 MS. LEWIS: If he's able to answer that

13:49:36 19 besides reviewing the document.

13:50:08 20 THE WITNESS: Well, here's my sense of it.

13:50:12 21 That on the top of Page 3, the end of

13:50:15 22 Paragraph 4, it says that the applicant's mark is

13:50:19 23 Motown USA & Design.

13:50:20 24 So when you look at the first page of

13:50:22 25 the Exhibit 111 where it says service mark, it's

WILLIAM WADDELL

13:50:26 1 Motown USA & Design.

13:50:27 2 And that's the mark that Motown Harley

13:50:30 3 Davidson, Inc., whoever they are, is seeking

13:50:34 4 apparently a registration for. And they're seeking

13:50:38 5 that registration for retail stores.

13:50:40 6 So the similarity would be that, yes, we

13:50:42 7 have licensed the Motown mark for retail stores

13:50:47 8 before.

13:50:47 9 And here, Harley Davidson is seeking use

13:50:50 10 of that same Motown name in connection with retail

13:50:53 11 stores.

13:50:53 12 BY MR. ISER:

13:50:54 13 Q. Okay. Now, have you -- has your company

13:51:03 14 licensed the mark Motown for retail stores other than

13:51:07 15 the one store at the Detroit Airport?

13:51:19 16 A. Not that I'm aware of.

13:51:20 17 Q. So the only licensing of the name Motown

13:51:23 18 for retail stores for the Motown souvenir shop is at

13:51:26 19 the Detroit Airport.

13:51:26 20 Right?

13:51:29 21 A. Well, we license the mark for the Motown

13:51:31 22 museum, and they sell goods out of their gift shop.

13:51:38 23 So they're a retail store in a fashion.

13:51:41 24 Q. Okay. Is it your belief as you sit here

13:51:44 25 that someone would confuse that with a motorcycle

WILLIAM WADDELL

13:51:47 1 shop?

13:51:50 2 MS. LEWIS: Objection.

13:51:51 3 THE WITNESS: Confuse the Motown -- the museum
13:51:53 4 with a motorcycle shop?

13:51:54 5 No, I don't think anybody would be
13:51:56 6 confused by that.

13:51:57 7 BY MR. ISER:

13:51:57 8 Q. Okay. And so as you sit here now, you
13:52:00 9 don't know the status of this opposition proceeding?

13:52:04 10 A. I do not.

13:52:05 11 Q. Do you think anybody would confuse the
13:52:08 12 Motown souvenir store in the Detroit Airport with a
13:52:13 13 motorcycle shop?

13:52:13 14 MS. LEWIS: Objection. Calls for a legal
13:52:15 15 conclusion, and calls for speculation.

13:52:24 16 THE WITNESS: I don't know.

13:52:26 17 Probably not.

13:52:33 18 BY MR. ISER:

13:54:15 19 Q. Are you familiar with a product known as
13:54:18 20 Tooth Tunes?

13:54:22 21 A. Tooth Tunes?

13:54:23 22 Q. Yes, sir.

13:54:29 23 A. Familiar how?

13:54:30 24 Q. Are you aware of such a product known as
13:54:33 25 Tooth Tunes?

WILLIAM WADDELL

13:54:34 1 I believe it's an electric tooth brush
13:54:36 2 that plays --
13:54:37 3 A. Music?
13:54:38 4 Q. -- songs while the child is brushing his
13:54:40 5 or her teeth.
13:54:44 6 A. I'm aware of it.
13:54:45 7 Q. What is your -- how are you aware of it?
13:54:49 8 A. Well, counsel told me it exists.
13:54:51 9 Q. Counsel told you it exists.
13:54:54 10 Other than what you know from counsel in
13:54:57 11 preparation for your deposition, have you any
13:54:58 12 awareness of that product?
13:55:00 13 A. Never heard of it before.
13:55:00 14 Q. All right. Do you know whether or not
13:55:03 15 your company has issued a license with respect to any
13:55:08 16 Motown trademark or sound recording for a Tooth Tunes
13:55:12 17 toothbrush?
13:55:12 18 A. No knowledge of that.
13:55:13 19 Q. Other than the Motown Store in the
13:55:54 20 Detroit Airport and museum --
13:55:57 21 That museum is the Hitsville Museum in
13:56:01 22 Detroit?
13:56:01 23 Is that what it is?
13:56:02 24 A. I think it's called that.
13:56:03 25 Q. Yeah.

WILLIAM WADDELL

13:56:04 1 The merchandise we're talking about is
13:56:05 2 sold at those two stores.
13:56:07 3 Correct?
13:56:08 4 A. Yeah.
13:56:08 5 Q. Anywhere else other than those two
13:56:10 6 stores that that type of merchandise is sold?
13:56:12 7 MS. LEWIS: Objection. Vague and ambiguous.
13:56:16 8 THE WITNESS: That type of merchandise?
13:56:17 9 What type?
13:56:17 10 BY MR. ISER:
13:56:19 11 Q. Little souvenirs.
13:56:21 12 MS. LEWIS: Same objection.
13:56:24 13 THE WITNESS: I don't know.
13:56:28 14 MR. ISER: Okay. I have no further questions.
13:57:00 15 MS. LEWIS: I may have one or two limited
13:57:03 16 follow-up.
13:57:03 17 Let's just -- if we could go off the
13:57:06 18 record and I can consult for a few minutes.
13:57:13 19 THE VIDEOGRAPHER: Going off the record.
13:57:14 20 The time is 13:57.
14:05:49 21 (Whereupon a recess was taken)
14:05:51 22 THE VIDEOGRAPHER: Back on the record.
14:05:59 23 The time is 14:06 hours.
14:05:59 24 / / /
14:05:59 25 / / /

WILLIAM WADDELL

EXAMINATION

14:06:02 1

14:06:02 2 BY MS. LEWIS:

14:06:05 3 Q. You testified earlier today that --
14:06:08 4 about a group called The Stronghold Group.

14:06:10 5 Do you recall that?

14:06:10 6 A. Yes.

14:06:10 7 Q. And also about a company or an entity
14:06:13 8 known as The Singing Machine.

14:06:14 9 Do you also recall that?

14:06:16 10 A. Yes.

14:06:16 11 Q. Did the Stronghold Group also act as a
14:06:21 12 licensing agent in connection with The Singing
14:06:23 13 Machine?

14:06:23 14 MR. ISER: Objection. The question is --
14:06:25 15 calls for legal conclusion.

14:06:26 16 THE WITNESS: Yes, upon relooking at or
14:06:28 17 looking at again Exhibit 106, it says in the recitals
14:06:36 18 on the first page that The Stronghold Group was
14:06:40 19 involved in this obtaining the services and this
14:06:44 20 License Agreement with respect to The Singing Machine.

14:06:47 21 MS. LEWIS: Okay. I have no further
14:06:49 22 questions.

14:06:50 23 MR. ISER: Just a couple more.

14:06:50 24 / / /

14:06:50 25 / / /

WILLIAM WADDELL

14:06:50 1 FURTHER EXAMINATION

14:06:50 2 BY MR. ISER:

14:06:50 3 Q. Sir, when we just took a break a moment

14:06:52 4 ago, did you discuss that question and answer with

14:06:54 5 counsel before you testified?

14:06:57 6 A. Yes.

14:06:57 7 Q. Okay. Thank you.

14:06:58 8 MR. ISER: I have no further questions.

14:07:01 9 Do you have anything more?

14:07:03 10 MS. LEWIS: I don't.

14:07:04 11 Stipulation?

14:07:05 12 MR. ISER: Are you in any --

14:07:09 13 I have no idea what the timing is now.

14:07:12 14 Is 30 days enough?

14:07:14 15 Does that work for you?

14:07:15 16 MS. LEWIS: Are you planning on going out of

14:07:17 17 town or anything --

14:07:18 18 THE WITNESS: No.

14:07:18 19 MS. LEWIS: -- in the next 30 days?

14:07:20 20 Why don't we just say 20 just to --

14:07:21 21 MR. ISER: Fine.

14:07:22 22 MS. LEWIS: -- be conservative.

14:07:24 23 MR. ISER: All right. So the original --

14:07:26 24 I offer the following stipulation:

14:07:28 25 The original will be sent to counsel for

WILLIAM WADDELL

14:07:31 1 the witness.

14:07:33 2 The witness will have 20 days from
14:07:35 3 Counsel's receipt to read the deposition transcript
14:07:39 4 and make any changes he wishes to make in the
14:07:41 5 transcript, and then sign of the transcript, the
14:07:44 6 original, as being true under penalty of perjury.

14:07:47 7 And he'll return that transcript to
14:07:49 8 Counsel who shall notify me in writing of the fact
14:07:52 9 that the original deposition transcript has been
14:07:56 10 signed, and will provide me with a photocopy of any
14:08:00 11 page on which the witness has made any changes.

14:08:04 12 And then Counsel will maintain the
14:08:06 13 original of that transcript and will make it readily
14:08:10 14 available to me to use for any purpose related to this
14:08:14 15 opposition proceeding or any subsequent litigation.

14:08:18 16 To the extent that the witness doesn't
14:08:20 17 sign the transcript as we've just discussed, then a
14:08:25 18 copy of the transcript can be used for all purposes as
14:08:28 19 if it were a signed original, and we will relieve the
14:08:31 20 court reporter of her duties and obligations to
14:08:33 21 maintain the custody of the original transcript.

14:08:39 22 MS. LEWIS: So stipulated.

14:08:40 23 MR. ISER: Okay. Thank you very much.

14:08:43 24 THE VIDEOGRAPHER: This concludes the
14:08:44 25 deposition of Bill Waddell.

WILLIAM WADDELL

14:08:45 1 The number of tapes used was two. The
14:08:47 2 original video tapes will be retained my
14:08:50 3 Merrill Legal Solutions-Los Angeles.
14:08:52 4 Going off the record.
14:08:53 5 The time is 14:08 hours.
6 (Whereupon the deposition was concluded
7 at 2:08 p.m.)
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WILLIAM WADDELL

PENALTY OF PERJURY

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I hereby declare I am the deponent in the
within matter; that I have read the foregoing
proceeding and know the contents thereof and I declare
that the same is true of my knowledge except as to the
matters which are therein stated upon my information
or belief, and as to those matters I believe it to be
true.

I declare under penalty of perjury that the
foregoing is true and correct.

Executed on the _____ day of
_____, 2008, at _____,
California.

WILLIAM WADDELL

WILLIAM WADDELL

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF LOS ANGELES)

4 I, SUSAN LYNN POBOR, Certified Shorthand
5 Reporter No. 5132 for the State of California, do
6 hereby certify:

7 That prior to being examined, the witness
8 named in the foregoing deposition, was duly sworn to
9 testify the truth, the whole truth, and nothing but
10 the truth;

11 That said deposition was taken down by me in
12 shorthand at the time and place therein named and
13 thereafter reduced by me to typewritten form and that
14 the same is a true, correct, and complete transcript
15 of said proceedings.

16 Before completion of the deposition, review of
17 the transcript [X] was [] was not requested. If
18 requested, any changes made by the deponent (and
19 provided to the reporter) during the period allowed
20 are appended hereto.

21 I further certify that I am not interested in
22 the outcome of the action.

23 Witness my hand this 12th day of
24 November, 2008.

25 Susan Lynn Pobor
Susan Lynn Pobor, CSR No. 5132

Deposition Exhibit 103